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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945 46

No. 221 23

TAZE HAMRICK GIBSON, PETITIONER

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 13, 1945
CERTIORARI GRANTED OCTOBER 22, 1945

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a [Caption omitted.]

b In United States Circuit Court of Appeals, Eighth Circuit

No. 13,049. January Term, 1945

TAZE HAMRICK GIBSON, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of South Dakota

Order denying bail and advancing hearing on appeal

February 19, 1945

On consideration of the application of appellant for bail pending appeal and the showing in support thereof, such application and the granting of bail pending appeal are hereby denied. The alternative application of appellant for advancement of the hearing on the appeal is hereby granted to the extent that the appeal will be set for hearing at the May Term, 1945, provided the record, printed record, and briefs of appellant are all filed within such time as to permit the filing of briefs by appellee under the Rules and to enable the Court to hear the matter at that Term.

c In United States Circuit Court of Appeals, Eighth Circuit

[Title omitted.]

Order

March 20, 1945

This matter comes before the Court upon the application of appellant to proceed further in this appeal in forma pauperis. It is made to appear that appellant has procured and paid for a transcript which has been filed in this Court and that a deposit of Forty ($40.00) Dollars has been made to cover general Clerk's costs.

It is ordered that the Forty ($40.00) Dollars heretofore deposited with the Clerk of this Court be used for payment of general Clerk's costs in so far as they have or will accrue in connection with this appeal; that the appeal may be presented on the typewritten transcript now on file with the Clerk of this Court; that appellant may present his case by five (5) clearly legible typewritten briefs (one of which shall be served upon and be for the use of appellee, one of which shall be for the records of this Court, and three of which shall be for the use of the Judges hearing the appeal.

1 [Caption omitted.]

2 In the District Court of the United States for the District of South Dakota, Northern Division

Ad. November Term, 1944

No. 1811 N. D.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

TAZE HAMRICK GIBSON, DEFENDANT

Indictment

Filed Dec. 6, 1944

The Grand Jury charges:

That Taze Hamrick Gibson, on or about the twenty-eighth day of August 1944, at Hill City, in the County of Pennington, in the Western Division of the District of South Dakota and within the exclusive jurisdiction of this Court, being then and there a registrant under the Selective Training and Service Act of 1940, and being then and there under the jurisdiction of the Selective Service Board A of Union County, at El Dorado, Arkansas, and was classified by the said Selective Service Board under his claim to exemption for conscientious objectors, was duly classified by said Selective Service Board for civilian work of national importance and placed in Class IV-E because he was found to be a person fit for general military service, but by reason of his religious training and belief conscientiously was opposed to both combatant and non-

combatant training and service in the land or naval forces of the United States, and after being thus placed in Class IV-E, as aforesaid, was duly assigned to work of national importance and was duly notified of his aforesaid assignment; after having been thus assigned to work of national importance under civilian direction at Civilian Public Service Camp No. 57, said defendant did so report for said work pursuant to said assignment, and was
3 thereafter transported to said Civilian Public Service Camp No. 57 on or about August 23, 1944, and enrolled in said camp; that having been thus assigned to and transported to said Civilian Public Service Camp No. 57, and having duly enrolled therein, said defendant did, at and in the County of Pennington, in the Division and District aforesaid, unlawfully, wilfully, knowingly and feloniously fail and neglect to abide by the rules and regulations prescribed and established by the Director of the Selective Service System for the conduct of registrants assigned to civilian work of national importance in such Civilian Public Service Camps, in that he, the said defendant, did then and there, to-wit: on or about the twenty-eighth day of August 1944, without authority and in violation of said rules and regulations leave and absent himself from said camp with intent on the part of him, the said defendant, to remain permanently away from said camp; that by said conduct he, the said defendant, did then and there unlawfully, knowingly, wilfully and feloniously fail, neglect and refuse to perform a duty which he, the said defendant, was charged under said Selective Training and Service Act of 1940, and the rules and regulations duly made and promulgated thereunder; that is to say, said defendant did then and there unlawfully, wilfully, knowingly, and feloniously, fail, neglect, and refuse to remain at said Civilian Public Service Camp No. 57 until lawfully transferred or released therefrom, contrary to Section 311, Title 50, United States Code Annotated, and against the peace and dignity of the United States of America.

A True Bill:

ALBRO C. AYRES, *Foreman.*

GEORGE PHILIP,
United States Attorney for the District of South Dakota.

4 [Endorsed:] No. 1811 N. D. United States District Court, District of So. Dak., Northern Division. The United States of America, Plaintiff, vs. Taze Hamrick Gibson, Defendant. Indictment Count 1—Sec. 311, Title 50, U. S. C. A. (Leaving Civilian Public Service Camp—Selective Training and Service Act of 1940.) Filed in open court this 6th day of December A. D. 1944. Roy B. Marker, Clerk.

5 In United States District Court

[Title omitted.]

Motion for subpoenas

Filed Jan. 26, 1945

Now comes Taze Hamrick Gibson, the defendant, and requests the court to enter an order directing the Clerk to issue subpoenas to the witnesses hereinafter named:

(1) A. P. Reynolds, Chairman of Local Board A, El Dorado, Arkansas;

(2) E. H. Mellor, member of the same Board, El Dorado, Arkansas;

(3) B. R. McClannahan, member of the same Board, El Dorado, Arkansas;

(4) S. C. Vinsonhaler, Chairman of Appeal Board No. 2, Little Rock, Arkansas;

(5) Joe K. Mahony, member of Appeal Board No. 2, El Dorado, Arkansas;

(6) Brigadier General Ebenezer L. Compere, Little Rock, Arkansas;

(7) Major Troy W. Lewis, Little Rock, Arkansas.

The testimony of these witnesses is material to the defense urged by the defendant to the indictment, in that defendant shall establish by each of these witnesses that they participated in the classification of the defendant by the Selective Service System and reviewed the defendant's draft board file. Each of said witnesses will testify

6 that all of the evidence considered was reduced to writing; that the undisputed evidence showed that defendant was a duly ordained minister of the Watchtower Bible and Tract Society and of Jehovah's Witnesses, a recognized religious organization under the Act;

that defendant was duly recognized by said organization and regularly performed his duties as such minister by devoting substantially all his time to the furtherance of his missionary evangelistic work at all times involved herein, and that he had dedicated his entire life to the performance of his said duties. Moreover, each of such witnesses shall testify that he did not find any evidence which shows that the defendant was not devoting his full time and had not dedicated his entire life to the performance of his duties as a minister; that each did not find that the defendant fictitiously or falsely claimed to be an ordained minister, and did not find that there was any evidence in the file which contradicted the claim of the defendant that he represented the Watchtower Bible and Tract Society as one of its duly ordained and regularly acting ministers and missionary evangelists; that they cannot show wherein defendant does not fit Opinion No. 14 of the Selective Service System concerning his ministerial status as one of Jehovah's Witnesses, and that the only reason defendant was classified as liable for training and service, and the only reason defendant's claim for exemption as a minister of religion was denied, was because his name did not appear on the certified official list of ministers of the Watchtower Bible and Tract Society circulated by National Headquarters of the Selective Service System to all State Headquarters of said system.

All of this evidence would prove that the Selective
7 Service System had no evidence disputing defend-
ant's claim; that the System acted contrary to the undisputed evidence, in excess of its statutory authority, without jurisdiction, without support of any evidence, contrary to law, contrary to the Selective Service Regulations and the due process clause of the Fifth Amendment; and therefore the order upon which the indictment is based is illegal and void and of no force and effect.

(8) Sam Pryor, Hutting, Arkansas;

(9) Luther Lewis, Strong, Arkansas;

(10) Ethel Snodgrass, Higgins, Missouri—

each of which last named witnesses shall testify that in the fall of 1941 defendant was assigned to El Dorado, Arkansas, to build up a congregation of Jehovah's witnesses by carrying on his full-time missionary evangelistic

work in El Dorado, Arkansas, until October 1942, when he left El Dorado and has since been carrying on his missionary work elsewhere; that during the time he was in El Dorado, Arkansas, he regularly carried on his full-time missionary evangelistic work and acted as a regular and duly ordained minister of the Watchtower Bible and Tract Society and Jehovah's witnesses; that the defendant was looked upon by such persons and other persons in El Dorado as standing in relation to Jehovah's witnesses as the orthodox religious clergy stand toward their congregations, and that the defendant is qualified to perform ceremonies in connection with the discharge of his duties as an ordained minister; that the defendant is as a fact a minister of religion within the meaning of section 5(d) of the Selective Training and Service Act, and is exempt from all statutory duty of training and service; that such evidence relates to whether or not the draft board had authority or jurisdiction to induct the defendant for training and service, and the court can receive such evidence de novo as to the exempt status of the defendant in
8 defense to the indictment.

That the above named witnesses will therefore testify to evidence which is material to the defendant's defense to the indictment; that he cannot safely go to trial without such witnesses; that such witnesses are not within the district or within one hundred miles of the place of trial, and defendant is not possessed of sufficient means and is actually unable to pay the fees of such witnesses for travel from Arkansas and Missouri to Sioux Falls, South Dakota, for trial, and that he greatly needs such witnesses.

Wherefore defendant prays that the court render an order to the Clerk directing that such witnesses be subpoenaed in Arkansas and Missouri, commanding them to appear before this court on February 13, 1945, to give evidence in behalf of the defendant. Defendant further prays that the fees of such witnesses be paid in the same

manner that similar costs and fees are paid to witnesses subpoenaed in behalf of the United States of America.

Taze Hamrick Gibson,
TAZE HAMRICK GIBSON, *Defendant.*

HAYDEN C. COVINGTON,
Attorney for Defendant.

Sworn to and subscribed before me this 23 day of January 1945:

[NOTARIAL SEAL]
ORPAH DAVIDSON, *Notary Public.*
My commission expires Aug. 2, '45.

10 In United States District Court

[Title omitted.]

Order

Filed Jan. 26, 1945

A Motion for Subpoenas having been filed herein by the above named defendant with the Clerk of this Court; and,

The Clerk having brought the same to the attention of the Court at two o'clock in the afternoon of this day; and,

It appearing to the Court that the said motion is in the form of an affidavit setting forth the names and addresses of certain persons whose evidence is claimed by defendant to be material to his defense; that he cannot safely go to trial without them; and stating what he expects to prove by each of said witnesses; that said witnesses are not within this District, and are not within one hundred miles of the City of Sioux Falls, South Dakota, where it is proposed to try said case; and

It appearing that defendant is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses; and

It appearing to the Court from an examination of said Motion for Subpoenas that the testimony of the witnesses sought to be subpoenaed is not competent as a defense to the charge in this case, nor material to any of the issues

herein, and that the said requested witnesses are
11 not within ~~this District~~, nor within one hundred miles of the place of trial; and,

The Court having considered the showing of the defendant, and being fully advised in the premises:

It is therefore ORDERED that the Motion for Subpoenas be, and the same is, hereby denied.

Dated at Sioux Falls, South Dakota, this 26th day of January, 1945.

By the Court:

A. LEE WYMAN, *District Judge.*

Attest:

[SEAL OF COURT]
ROY B. MARKER, *Clerk.*

12 In United States District Court

[Title omitted.]

Motion to quash indictment

Filed Feb. 1, 1945

Now comes the defendant, Taze Hamrick Gibson, by his attorney, Hayden C. Covington, and moves the court to quash the indictment and to order the prosecution dismissed because:

1. The indictment fails to state an offense against the laws of the United States.

2. The indictment is insufficient to state an offense.

3. The indictment fails definitely and sufficiently to advise the defendant of the nature of the offense charged.

4. The criminal sanctions clause of section 11 of the Selective Training and Service Act, and Regulations thereunder, requiring the defendant to comply with the order to report for work of national importance, have been construed by the courts so as to require the defendant (who has been examined on a preinduction physical examination and declared acceptable and who has exhausted his administrative remedies by complying with and submitting to the selective process through his reporting at the specified Civilian Public Service Camp at Hill City, South Dakota, but who there refused to perform said work of national importance after being examined at said camp) as a con-

dition precedent to testing the invalidity of the classification to submit to the terms of the order to report pursuant to the illegal order upon which the indictment is based, a vain and needless thing or act.

5. The construction of the Act and Regulations penalizes the defendant for having failed to submit to the order by denying him the right to show that the
13 order is invalid because of defendant's exemption from duty under the Act as a minister of religion, thus making said Act and Regulations thereunder unconstitutional and void for each of the following reasons, to wit:

(a) They constitute a bill of attainder, contrary to clause 3 in section 9 of Article I of the Federal Constitution.

(b) They transfer and surrender the judicial power of the United States Courts to the draft boards, in the trial of a criminal case, so as to permit said boards to determine the guilt of the defendant, a judicial function, contrary to Article III of the Federal Constitution.

(c) They abridge the right of the defendant to have a judicial trial and deny him the right to prove his innocence, and also his right to be heard in his defense, contrary to the due process clause of the Fifth Amendment to the Federal Constitution.

(d) They deny and abridge the right of the defendant to a trial by jury and the privilege of having a jury pass on whether the defendant owes a duty because exempt and whether he is guilty of failing to perform a duty, contrary to the provisions of the Federal Constitution guaranteeing a trial by jury and to the Sixth Amendment forbidding the denial thereof.

(e) They permit conviction without evidence or upon hearsay evidence, and deny the defendant the right of counsel in his defense, contrary to the Fifth and Sixth Amendments to the Federal Constitution.

(f) They permit the draft boards to determine the guilt of the defendant who is exempt and could not be found guilty of violating a duty under the Act, and thereby the Act and Regulations are converted into an *ex post facto* law, contrary to clause 3 in section 9 of Article I of the Federal Constitution.

6. The indictment is void because it was obtained by the district attorney, returned by the grand jury, received and filed by the court, in violation of Article 3, Section 2, clause 3 of the United States Constitution and the Sixth Amendment to the United States Constitution, requiring that this defendant in this criminal action shall be tried in the district in which the crime was committed; and the alleged offense, if any, in this case was not committed within the federal district of South Dakota but in the federal western district of Arkansas, as appears from the facts set forth herein and in defendant's affidavit submitted herewith.

7. The Selective Training and Service Act of 1940, as amended, and the Regulations thereunder, under
14 which the indictment herein was returned, are null and void and unconstitutional, because the Supreme Court of the United States has construed and applied the same to require the defendant, a registrant under the Act, to report at a Civilian Public Service Camp at Hill City, South Dakota, in order to exhaust his remedies under the Act, which camp is more than one hundred miles from Eldorado, Arkansas, the place where defendant registered and where the draft board is situated. Said construction has unlawfully authorized the Government of the United States to institute a prosecution in the District of South Dakota, which is not the district where the controversy arose, or where the draft board is situated, or where the order on which the indictment is based was issued, or where the alleged crime was committed. Thereby defendant is subjected to serious hardships upon the trial in this district. He is forced to go to trial at a place remote from his home, remote from Arkansas, the place where the controversy arose and which is the place where all the witnesses are situated. Such construction of the Act and Regulations requiring defendant to report at Hill City, South Dakota, to exhaust his administrative remedies denies and deprives defendant of a fair and full trial because he shall be unable to bring his witnesses all the way from Arkansas to South Dakota to testify as to his defenses and the issues, since defendant is an indigent person and said witnesses reside more than one hundred miles from the place of trial. Said construction permitting

such hardships is unreasonable, arbitrary and capricious, and deprives defendant of his rights and liberty contrary to Article III, Section 2, clause 3 of the United States Constitution and the Fifth and Sixth Amendments to the United States Constitution.

Wherefore, the indictment being insufficient and the law being unconstitutional and void as construed, it will not support a prosecution. Accordingly, the indictment should be quashed and dismissed with an order discharging the defendant from all liability. Defendant prays for such other and further relief to which he may justly be entitled in the premises.

Hayden C. Covington,
HAYDEN C. COVINGTON,
Attorney for Defendant.

Office and P. O. Address: 117 Adams Street, Brooklyn 1, New York. Telephone Triangle 5-1474.

In United States District Court

[Title omitted.]

Defendant's affidavit

Filed Feb. 1, 1943

STATE OF INDIANA, *County of Vermillion, ss:*

Taze Hamrick Gibson, being duly sworn upon oath, deposes and says:

1. That he is temporarily staying at Clinton, Indiana, is a citizen of the State of Mississippi and is the defendant in the above entitled and numbered action in which the attached motion to quash shall be filed. That he makes this affidavit to support said motion to quash.

2. That he registered pursuant to the Selective Training and Service Act of 1940, as amended, in 1942, with Local Board A of the Selective Service System at El Dorado, Arkansas. He filed his questionnaire in October 1942 showing that he was duly ordained minister regularly performing his duties as such in behalf of Jehovah's witnesses and the Watch Tower Bible and Tract Society.

3. On November 6, 1942 he was unlawfully classified in

class I-A by said local board making him liable for training and service, and arbitrarily denying his claim for exemption as a minister. On May 8, 1943 he was classified by the Board of Appeal in class IV-E, making him liable for work of national importance as a conscientious objector and arbitrarily denying his claim for exemption as a minister of religion under the Act and Regulations. He thereafter duly applied to the State and National Directors of Selective Service for action in his behalf.
17 They were requested to take an appeal to the President and grant him his claim for exemption as a minister of religion under the Act. They declined to take action.

4. Thereafter defendant was ordered to report for work of national importance at a Civilian Public Service Camp situated at Hill City, South Dakota, on August 21, 1944. He reported to the camp pursuant to the Act and Regulations and the opinion of the Supreme Court of the United States in Falbo v. United States, 320 U. S. 549, to exhaust his administrative remedies under the Act by taking the physical examination in order to challenge the legality of the draft board's action in the courts of the United States. He was not examined and accepted at the camp until on or about August 28, 1944, at which time he left the camp when he had completed his administrative remedies.

5. The order to report to do work of national importance at the camp at Hill City, South Dakota, was issued by Local Board A of Eldorado, Arkansas, and it was upon this order that the examination for acceptance at the camp was made. The alleged duty of the defendant to stay at the camp was based upon this said order issued by Local Board A of Eldorado, Arkansas. Therefore the violation of the Act and Regulations alleged in the indictment is based upon this order to report for work of national importance. Accordingly, the violation, if any, of the Act charged by the indictment was committed by the defendant in the federal district of Arkansas, the place where the board was situated, the place where the controversy arose, the place where the witnesses as to plaintiff's duty under the Act and Regulations reside and which is properly the only place to try the liability, if any, of the defendant under the Act and Regulations.

18 6. The indictment is void because it was obtained by the district attorney, returned by the grand jury, received and filed by the court, in violation of Article 3, Section 2, clause 3 of the United States Constitution and the Sixth Amendment to the United States Constitution, requiring that this defendant in this criminal action shall be tried in the district in which the crime was committed; and the alleged offense, if any, in this case was not committed within the federal district of South Dakota but in the federal western district of Arkansas, as appears from the facts herein set forth.

7. The Selective Training and Service Act of 1940, as amended, and the Regulations thereunder, under which the indictment herein was returned, are null and void and unconstitutional, because the Supreme Court of the United States has construed and applied the same to require the defendant, a registrant under the Act, to report at a Civilian Public Service Camp at Hill City, South Dakota, in order to exhaust his remedies under the Act, which camp is more than one hundred miles from Eldorado, Arkansas, the place where defendant registered and where the draft board is situated. Said construction has unlawfully authorized the Government of the United States to institute a prosecution in the District of South Dakota, which is not the district where the controversy arose, where the draft board is situated, where the order on which the indictment is based was issued and where the alleged crime was committed. Thereby defendant is subjected to serious hardships upon the trial in this district. He is forced to go to trial at a place remote from his home, remote from Arkansas, the place where the controversy arose and which is the place where all the witnesses are situated. Such construction of the Act and Reg-

19 ulations requiring defendant to report at Hill City, South Dakota, to exhaust his administrative remedies denies and deprives defendant of a fair and full trial because he shall be unable to bring his witnesses all the way from Arkansas to South Dakota to testify as to his defenses and the issues, since defendant is an indigent person and said witnesses reside more than one hundred miles from the place of trial. Said construction permitting such hardships is unreasonable, arbitrary and capri-

cious, and deprives defendant of his rights and liberty contrary to Article 3, Section 2, clause 3 of the United States Constitution and to the Fifth and Sixth Amendments to the United States Constitution. Therefore the United States Attorney had no authority to obtain the indictment from the grand jury in this district; the grand jury had no authority to receive and file an indictment returned in this district, because the alleged offense was not committed in the federal district of South Dakota. The controversy upon which the indictment is based arose in the federal western district and State of Arkansas. Defendant was exempt from all training and service under the Act and Regulations because he was a minister of religion within the meaning of Section 5 (d) of the Act. Under the Act and Regulations all that required of him to do so was to register, inasmuch as he was a minister. Defendant duly exhausted all of his remedies of appeal, provided for in the Regulations. Upon the trial it shall be necessary to summon witnesses from Eldorado, Arkansas, more than one hundred miles from the place of trial. Among several witnesses there shall be the members of the local draft board A of Eldorado, Arkansas, the clerk of said board, members of the board of appeal and the State Director of Selective Service System for the State of Arkansas.

20 8. The controversy between the United States of America and the defendant arose in the federal western district of Arkansas. It is there that the order upon which the indictment is based was issued. Defendant did not report to the camp at Hill City, South Dakota, for the purpose of performing work of national importance, but he reported there for the sole purpose of exhausting his administrative remedies by undergoing a physical examination to determine whether or not he was acceptable. He was examined and declared acceptable and immediately left the camp. He reported to camp to comply with the technicalities of the law to complete the selective process. Therefore it is apparent from the foregoing that any alleged crime was committed, if at all, in the federal western district of Arkansas, where the local board is situated, where all the witnesses for the Government and the defendant are located. The liability of defendant

under the Act is not triable in the district of South Dakota. Since Congress in the Act has not provided for the venue and place of trial of alleged violators in states where registrants report for the purpose of exhausting their administrative remedies, it must be assumed that Congress intended that a registrant should be tried for an alleged violation of the Act in the federal district where the draft board was located, in the district where the controversy arose, and in the district where the order upon which the indictment is based was issued, which is the western district of Arkansas. Accordingly, the indictment herein is void because it was returned in violation of Article 3, Section 2, clause 3, of the United States Constitution and the Sixth Amendment to the United States Constitution, which require that a defendant in a criminal case shall be tried in the district wherein the crime shall have been committed, which was only within the western district of Arkansas, and which is the only district where the defendant can lawfully be indicted and tried.

Taze Hamrick Gibson.
TAZE HAMRICK GIBSON.

Sworn to and subscribed before me this 27th day of December 1944.

[NOTARY SEAL] E. E. NEEL, *Notary Public.*
My commission expires June 29, 1947.

In United States District Court

[Title omitted.]

Motion for dismissal of the indictment and for judgment of acquittal

Filed Feb. 13, 1945

Now comes the defendant at the close of all the evidence when both parties have announced that they rest their respective cases, and before the court announces its decision, and requests the court to dismiss the indictment and enter a judgment of acquittal, for each of the following reasons:

1. The government has wholly failed to prove a case against the defendant under the indictment.

2. There is no evidence to show that the defendant violated the Act as charged in the Indictment.

3. The overwhelming preponderance of the evidence and the undisputed evidence shows that the defendant is not guilty as charged in the indictment.

4. Acceptance by the armed forces upon the preinduction physical examination and the subsequent appearance of defendant at the local board and at the Civilian Public Service camp, completes the administrative process so as to permit judicial review of the illegal classification in defense to the indictment, based on his failure to remain at the CPS camp, and therefore the defendant is entitled to have the court consider the following defenses, that the classification and order on which the indictment was based were void.

5. It is not necessary for defendant voluntarily to stay at the Civilian Public Service camp and become a CPS worker as an assignee in compliance with the order, because such is to require defendant to perform a vain, idle and immaterial act as a condition precedent to judicial review of the illegal classification.

6. The undisputed evidence before the boards and before this court establishes that the defendant was exempt from all training and service under the Selective Training and Service Act because a duly ordained minister of religion under section 5 (d) of the Act and section 622.44 of the Regulations promulgated thereunder, and there was no substantial evidence that he was not exempt under the terms of the Act and Regulations; therefore the final classification and the orders based thereon were without authority of law, in excess of the jurisdiction of the draft boards and of the camp authorities, arbitrary and capricious, without support of substantial evidence, contrary to law, contrary to the Act and Regulations, contrary to the Constitution by denying defendant of his rights and liberty without due process of law.

7. There is no evidence showing that defendant is not a minister of religion as claimed, no evidence that he fictitiously claimed to be a minister, and no evidence showing that he was not exempt as a minister, and the undisputed

evidence before the boards showed that he was a minister of religion duly and regularly performing his duties as such at all times herein, and that he was exempt as such under the Act and Regulations. Moreover, the evidence shows that the boards denied his claim for exemption upon a fictitious, arbitrary and capricious ground which was whether defendant's name appeared on a cer-
25 tified official list of ministers filed with Selective Service National Headquarters. Furthermore, the boards did not follow Opinion No. 14 of Selective Service National Headquarters in classifying defendant. Moreover, there is no evidence to sustain the action of the draft boards in this case. By reason thereof, the orders of the local board are void, illegal and contrary to law, and the order of the camp authorities which defendant is charged with violating is without legal force and effect.

8. The order upon which the indictment is based is void because the administrative agency denied defendant a fair and full hearing, did not consider evidence, ignored all evidence showing defendant was exempt, refused to consider evidence showing defendant was exempt, violated defendant's procedural rights, all of which action denied defendant his rights of due process and liberty, contrary to the Fifth Amendment to the United States Constitution.

9. The undisputed evidence before the boards and this court establishes that defendant is a minister of religion, exempt from all duty of training and service under the Act and Regulations and that the boards violated the due process clause and denied defendant his rights and liberty without due process of law, contrary to the Fifth Amendment to the United States Constitution.

10. The undisputed evidence before the boards and this court establishes that defendant is a minister of religion, exempt from all duty of training and service under the Act and Regulations and that the boards violated the due process clause of the Fifth Amendment by denying defendant a full and fair hearing, by ignoring and rejecting the undisputed evidence which defendant offered to the local board showing that he was exempt from all training and service under the Act.

11. The construction placed upon the Act and
26 Regulations by the court requiring the defendant to remain at the Civilian Public Service Camp and

apply for a writ of habeas corpus as the only remedy and means of challenging the validity of the orders on which the indictment is based, deprives defendant of his constitutional rights. Moreover, the court's denial of defendant's efforts to prove in defense to the indictment that the action of the administrative agency is void because he is exempt as a minister of religion denied defendant his rights to a full trial of his defenses under the law in violation of the due process clause of the Fifth Amendment, denied him his right to a judicial trial and judicial inquiry as to the administrative action contrary to the Third Article of the United States Constitution, and thereby the Act and Regulations have been converted into a Bill of Attainder contrary to the First Article, section 9, clause 3, of the United States Constitution.

12. The criminal sanctions clause of Section 11 of the Act and Regulations promulgated thereunder have been construed by the court and applied to the facts in this case so as to penalize the defendant for claiming his rights and refusing to stay at the Civilian Public Service camp in compliance with a void order, and thereby the Act and Regulations have been converted into a Bill of Attainder contrary to the First Article, section 9, clause 3, of the United States Constitution; such construction transfers and surrenders the judicial power of the United States Courts to the administrative agency contrary to the Third Article of the United States Constitution, abridges and denies defendant his right to prove his innocence contrary to the Fifth Amendment to the Constitution, permits the conviction without evidence and upon hearsay evidence,
27 and denies defendant the right to counsel because he is not allowed counsel before the local board, which is the exclusive agency for determining guilt of defendant under the Act, all contrary to the Fifth and Sixth Amendments to the United States Constitution.

Wherefore defendant prays that, upon consideration hereof, the court find the defendant not guilty, dismiss the indictment, render and enter a judgment of acquittal, and direct that the defendant be discharged. The defendant

prays for such other and further relief to which he may show himself to be justly entitled.

Hayden C. Covington,
HAYDEN C. COVINGTON,
Attorney for Defendant.

100 And afterwards, to wit, on the 14th day of February A. D. 1945, there was filed in the office of the clerk of said court, Order overruling Motion to Quash Indictment; which said Order is in words and figures the following, to wit:

101 In United States District Court

[Title omitted.]

Order overruling defendant's motion to quash the indictment

Filed Feb. 14, 1945

On this the 13th day of February A. D. 1945 duly came on to be heard the defendant's motion to quash the indictment, which was timely filed and urged by the defendant.

The Court, after hearing argument of counsel thereon and being duly advised in the premises, is of the opinion that the motion should be in all things overruled.

Accordingly, it is hereby ordered, adjudged, and decreed by the Court that the defendant's motion to quash the indictment be and is hereby in all things overruled by the court, to which action of the Court the defendant in open court duly excepted.

A. LEE WYMAN,
United States District Judge.

Attest:
[SEAL OF COURT] ROY B. MARKER, *Clerk.*

102 In United States District Court

[Title omitted.]

Order overruling defendant's motion for dismissal of the indictment and for a judgment of acquittal

Filed Feb. 14, 1945

On this the 13th day of February A. D. 1945 duly came on to be heard the defendant's motion for dismissal of the indictment and for a judgment of acquittal, which was duly filed at the close of all the evidence and before the Court announced the findings of fact and conclusions of law, and

The Court, after hearing argument of counsel thereon and being duly advised in the premises, is of the opinion that the motion should be in all things overruled.

Accordingly, it is hereby ordered, adjudged, and decreed by the Court that the defendant's motion for dismissal of the indictment and for a judgment of acquittal be and is hereby in all things overruled by the Court, to which action of the Court the defendant in open court duly excepted.

A. LEE WYMAN,
United States District Judge.

Attest:
[SEAL OF COURT] ROY B. MARKER, *Clerk.*

104 In United States District Court

[Title omitted.]

Findings of fact

Filed Feb. 14, 1945

This matter having come on regularly for hearing before the Court at Sioux Falls, South Dakota, on the 13th day of February 1945, before the Hon. A. Lee Wyman, United States District Judge, the plaintiff being represented by George Philip, United States Attorney for the District of South Dakota, and the defendant, Taze Hamrick Gibson, being present in Court, and being represented by Hayden Covington, his counsel, and

Certain Stipulations of Fact having been made and witnesses called, and the Court being advised in the premises makes the following—

FINDINGS OF FACT

I

The defendant, Taze Hamrick Gibson was born in Meridian, Mississippi, on September 14th, 1922, and is now twenty-two years of age. He registered under the Selective Training and Service Act of 1940 with Local Board A, Union County, El Dorado, Arkansas, in September of 1942. Following his registration a selective service questionnaire was sent to him on October 5th, 1942. The said questionnaire was returned to the local board by the defendant fully executed on October 12th, 1942. In such questionnaire the defendant claimed to be a minister of religion, a minister of Jehovah's Witnesses. On
105 November 6th, 1942, the said local board classified him 1–A. From that classification on November 12th, 1942, he appealed to the Board of Appeal, which board classified him 4–E. He was notified of this action of the board. Other appeal proceedings were had, but the 4–E classification was continued and still continues.

II

Acting on such 4–E classification, General Hershey, Director of Selective Service System, on May 23rd, 1944, made an order directed to the State Director of Illinois, to whose jurisdiction the case of Taze Hamrick Gibson had been transferred by the said local board at El Dorado, Arkansas, assigning this defendant to Civilian Public Service Camp No. 57, at Hill City, Pennington County, South Dakota, and ordering that the proper local board make the necessary order to the defendant to report for work of national importance.

III

The order to this defendant to report for work of national importance accordingly was made on August 8th, 1944, ordering him to appear and report at Civilian Public

Service Camp No. 57, at Hill City, South Dakota, on August 21st, 1944. He reported at said camp pursuant to such order and was there enrolled on or about August 23rd, 1944, and was given a pre-induction medical examination, which examination showed him fit for such service.

IV

The testimony shows, and the Court so finds, that the defendant did not go to said camp for the purpose of remaining there in conformity to the said order and the law, and that it was his intention when he went there not to stay at said camp.

106 V

Without any authority and in violation of the rules and regulations prescribed under the Selective Training and Service Act, and particularly Section 653.12 of the Selective Service Regulations, on August 28th 1944, the defendant left the said camp permanently. He deserted the camp.

Wherefore, the Court finds the defendant guilty as charged in the indictment and returns and files its verdict accordingly.

Dated at Sioux Falls, South Dakota, this 14th day of February, 1945.

By the Court:

A. LEE WYMAN, *Judge.*

Attest:

[SEAL OF COURT] ROY B. MARKER, *Clerk.*

107 In United States District Court

[Title omitted.]

Defendant's exceptions to the findings of fact and conclusions of law filed by the Court

Filed Feb. 14, 1945

To said Honorable Court:

Now comes the defendant, Taze Hamrick Gibson, in the above entitled and numbered cause and files and presents

this his exceptions and objections to the findings of fact and conclusions of law filed by the Court herein.
The defendant shows unto the court:

That the findings of fact that the defendant had a duty under the Act to stay at said camp and violated said duty by departing from said camp and the conclusion that the defendant's acts and conduct constituted a violation of the Selective Training and Service Act of 1940 is excepted to because contrary to the facts and law applicable to this case.

Moreover defendant excepts to said findings of fact and conclusion of law for the reason that the same do not cover all the issues involved in this case and the Court is now requested to make findings of fact and conclusions of law as requested by the defendant in his requests for findings of fact and conclusions of law numbers 1 to 27, inclusive. The Court's findings and conclusions are excepted to for failure to find and conclude as requested by the defendant in his said requests.

108 Wherefore, defendant objects and excepts to the findings of fact and conclusions of law filed by the Court herein.

HAYDEN C. COVINGTON,
Attorney for Defendant,
117 Adams Street, Brooklyn, New York.

109 In United States District Court

[Title omitted.]

Verdict by the court

Filed Feb. 14, 1945

This matter having been regularly heard by the Court at Sioux Falls, South Dakota, on the 13th day of February 1945, before A. Lee Wyman, United States District Judge; the plaintiff being represented by George Philip, United States Attorney; and the defendant, Taze Hamrick Gibson, being present in Court, and being represented by Hayden Covington, his counsel; and

The defendant, Taze Hamrick Gibson, having been fully advised as to his constitutional rights; having entered a

plea of not guilty; having duly waived his right of trial by jury by written waiver filed herein; and having consented in writing to be tried by the Court; and,

The plaintiff having consented in writing thereto; and

The Court having heard all the evidence and arguments of counsel, and being fully advised in the premises, hereby reports its verdict, finding the defendant guilty as charged in the indictment.

Dated February 14th, 1945.

By the Court:

A. LEE WYMAN, *Judge.*

110 Attest:

[SEAL OF COURT] ROY B. MARKER, *Clerk.*

111 In District Court of the United States, District of South Dakota, Western Division, at Sioux Falls

No. 3049 W. D. Criminal Indictment in one count for violation of U. S. C. A. Title 50, Sec. 311

UNITED STATES

v.

TAZE HAMRICK GIBSON

Judgment and sentence

Filed Feb. 14, 1945

On this 14th day of February 1945, came the United States Attorney and the defendant, Taze Hamrick Gibson, appearing in proper person and by counsel, and having been advised of his constitutional right of a trial by a jury, and having waived trial by a jury in writing, and

The defendant having been convicted upon a finding of guilty by the Court and the Court thereupon entering a verdict of guilty of the offense charged in the indictment in the above entitled cause, to wit: unlawfully leaving a Civilian Public Service Camp under the Selective Training and Service Act of 1940 with intent to remain permanently away from said camp, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no

sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of five years.

112 It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

By the Court:

A. LEE WYMAN,
United States District Judge.

Attest:
[SEAL OF COURT] ROY B. MARKER, *Clerk.*

113 In United States District Court

[Title omitted.]

Notice of and grounds for appeal

Filed Feb. 14, 1945

Name and address of appellant is: Taze Hamrick Gibson, 1602 South Fourth Street, Clinton, Indiana.

Name and address of appellant's attorney is: Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York.

The offense with which the defendant is charged is an alleged violation of Section 11 of the Selective Training and Service Act of 1940, as amended.

The date of the judgment is February 14, 1945.

A brief description of the judgment or sentence is: Five (5) years from February 14, 1945 in the custody of the Attorney General at such place as may be designated by the Attorney General.

Defendant-appellant is now in the custody of the United States Marshal for the District of South Dakota and confined in the County Jail at Sioux Falls, South Dakota.

I, the above named defendant-appellant, hereby appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the judgment above-mentioned, on the grounds set forth below:

Grounds for appeal

1. The court erred in overruling defendant's mo-
114 tion to quash the indictment.

2. The court erred in holding that the defendant could not show in defense to the indictment that the orders of the administrative agency upon which the indictment is based were void, illegal and contrary to the Act, the Regulations and the Constitution of the United States.

3. The court erred in holding that the defendant could not show in defense to the indictment that he had no duty for training and service under the Act and Regulations because he was exempt as a minister of religion under Section 5 (d) of the Act.

4. The court erred in excluding from the evidence the contents of the defendant's draft board file which showed that he had no duty for training and service under the Act and Regulations because they showed, without dispute, that the defendant was a minister of religion under the Act and Regulations.

5. The court erred in excluding from the evidence the contents of the defendant's draft board file which showed that the administrative agency had acted arbitrarily, capriciously, contrary to law, contrary to the Act, contrary to the Regulations, contrary to the evidence, without evidence, in violation of the Act, and deprived defendant of his rights contrary to the due process clause of the Fifth Amendment to the United States Constitution.

6. The court erred in excluding oral testimony of the defendant and his witness offered by the defendant as to defendant's ordination and full time activity as a minister of the gospel which showed that defendant was exempt
115 from all duty of training and service under the Act and therefore that the boards did not have jurisdiction or authority to order him to do work of national importance in a civilian public service camp.

7. The court erred in failing and refusing to grant defendant's motion for dismissal of the indictment and for a judgment of acquittal duly and timely urged at the close of all the evidence.

8. The court erred in failing and refusing to grant defendant's requests for findings of fact and conclusions of law duly filed at the close of all the evidence.

9. The court erred in making the findings of fact, the general finding of guilty as charged in the indictment and the conclusions of law based upon such findings of fact.

10. The court erred in rendering and in entering a judgment against the defendant and in sentencing the defendant.

11. The court erred in construing the Act and Regulations so as to deny the defendant the opportunity to defend to the indictment on the grounds that he had no duty for training and service because a minister of religion under Section 5 (d) of the Act. Such construction converts the Act and the Regulations into a bill of attainder contrary to clause 3, Section 9 of Article One of the United States Constitution, deprives the defendant of a judicial trial contrary to Article Three of the United States Constitution, and denies the defendant of his rights and liberty contrary to the due process clause of the Fifth Amendment to the United States Constitution.

12. For other grounds apparent upon the face of the record and appearing in the bills of exceptions to be hereafter filed.

13. For other grounds to be subsequently assigned
116 and set out in the Assignments of Error which shall be filed with the Clerk of this Court.

Taze Hamrick Gibson,
TAZE HAMRICK GIBSON,
Defendant-Appellant.

Hayden C. Covington,
HAYDEN C. COVINGTON,
Attorney for Defendant-Appellant,
117 Adams Street, Brooklyn, New York.

Dated and filed with the Clerk on February 14, 1945.

Service admitted Feby. 14, 1945.

GEORGE PHILIP,
United States Attorney.

117 In the District Court of the United States for the District of South Dakota

Criminal No. 3049 W

UNITED STATES OF AMERICA, PLAINTIFF

vs.

TAZE HAMRICK GIBSON, DEFENDANT

Bill of exceptions

Filed Feb. 23, 1945

Be it remembered that on the trial of this cause, in said court, at the October 1944 term thereof, the Honorable A. Lee Wyman, Judge of said court, presiding, the following proceedings were had, to wit:

119 [Title omitted.]

Before Hon. A. LEE WYMAN, District Judge

The above entitled matter came on for trial before the Court, at Sioux Falls, Minnehaha County, South Dakota, at 10:00 o'clock in the forenoon, on the 13th day of February, A. D. 1945.

Hon. George Philip, United States Attorney, appeared as counsel for the government.

Hayden C. Covington, Esq., of Brooklyn, New York, appeared as counsel for the defendant.

Proceedings were had as follows:

Mr. PHILIP. This is the case of the United States of America against Taze Hamrick Gibson. This is a Western Division case, and I have an application from the defendant to change the place of trial to the Southern Division, which I wish to file.

The COURT. Very well.

Mr. PHILIP. I now move the arraignment of the defendant.

The COURT. Proceed.

120 Mr. PHILIP. Your right name is Taze Hamrick Gibson?

DEFENDANT. Yes.

Mr. PHILIP. Mr. Covington is your attorney?

DEFENDANT. Yes.

MR. PHILIP. I assume that you have been fully informed as to your constitutional rights?

Mr. COVINGTON. I have informed him as to his constitutional rights and the major facts of the indictment.

Mr. PHILIP. The rules require that I read the indictment, which is as follows:

(Indictment read to defendant.)

Mr. COVINGTON. At this time I would like to call the Court's attention to the defendant's motion to quash.

(Here followed argument by both sides upon defendant's motion to quash.)

Under overruling motion to quash

The COURT. The motion to quash the indictment will be overruled.

Mr. COVINGTON. I except.

The COURT. Exception allowed.

Plea

Mr. PHILIP. Are you ready to plead at this time?

The DEFENDANT. Not guilty.

The COURT. Enter the plea of not guilty.

Stipulation

Mr. PHILIP. We have here a stipulation that the case may be tried at this time in Sioux Falls, and likewise a waiver of trial by jury and the consent by the government to the waiver.

121 Mr. PHILIP. I now move trial of the case of United States of America against Taze Hamrick Gibson.

Mr. COVINGTON. We are ready, Your Honor.

Opening statement

Mr. PHILIP. That puts in issue all of the allegations in the indictment, and in support of the allegations in the indictment the government expects to prove the following. I have gone over these facts with Mr. Covington and in large measure we are agreed.

The government expects to show that this defendant, now on trial, was born in Meridian, Mississippi, on the 14th of September, 1922. He is now 22 years of age. He registered in September, 1942, with Local Board A, Union County, Eldorado, Arkansas. Immediately following his registration a selective service questionnaire was sent to him, on October 5, 1942. The questionnaire was returned to the local board on October 12, 1942. In that questionnaire he claimed to be a minister of religion, a minister of Jehovah Witnesses. On November 6, 1942, the local board classified him 1A. From that classification and on November 12, 1942, he appealed to the State Board of Appeal, which board classified him 4E. He was so notified. Other proceedings were had but the 4E classification was continued, and still remains. Acting on that classification, General Hershey, Director of the Selective Service System, on May 23, 1944, made an order, directed to the State Director of Illinois, to whose jurisdiction the case of Taze Hamrick Gibson had been transferred by the board at Eldorado, Arkansas, assigning this de-
122 fendant to Civilian Public Service Camp No. 57, at Hill City, Pennington County, South Dakota, and ordering that the proper local board make the necessary order to the defendant to report for work of national importance. The order to this defendant accordingly was made on August 8, 1944, ordering him to appear and report at the camp on August 21, 1944. He reported at the camp pursuant to that order, and was there enrolled on or about August 23, 1944.

Mr. COVINGTON. We so agree that those facts stated by the government are true and correct.

Mr. PHILIP. If it is alright I would like to have the defendant also state.

The DEFENDANT. I so agree.

Mr. PHILIP. Pursuing the statement. Without any authority and in violation of the rules and regulations, on August 28, 1944, he left the camp permanently. He deserted from the camp. That is the charge here. The defendant pleaded not guilty. Stripped of all verbiage, that is the issue and the only issue. If the government proves the foregoing facts the Court will be asked to find and return a verdict of guilty.

The COURT. Under the issues, then, as I understand it, in view of that portion of the facts just stated that are admitted, the only issue that the government will be required to prove is that he left the camp without authority?

Mr. PHILIP. That is my understanding.

123 Mr. COVINGTON. I do not so understand. I believe there is an element of being able to prove he did it wilfully and knowingly, and furthermore, I still take the view that the orders upon which the camp assumed jurisdiction are void because first, the man is exempt from all training and service by act of Congress. They had no authority. We expect to show in defense to this indictment those facts which would show the invalidity of that order. We do disagree with Mr. Philip as to the matter at issue presently in this case. We say it is much broader.

The COURT. In asking the question which I asked, I didn't expect to elicit agreement with that understanding. I don't want the record to show that you necessarily agree with my construction of the law.

(Government's Exhibits 1, 2 and 3, marked for Identification.)

Mr. PHILIP. The government offers in evidence, Government's Exhibit 1, the questionnaire; Exhibit 2, the assignment; Exhibit 3, the order to report.

Mr. COVINGTON. No objection.

The COURT. Received.

124 ATLEE BEECHY, being called as a witness by the government, and affirming that he would tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. PHILIP:

Q. Your name is Atlee Beechy?

A. It is.

Q. Are you the Director of Civilian Public Service Camp No. 57, at Hill City?

A. I am at the present time.

Q. How long have you been such director?

A. I came to this camp October 16, 1944.

Q. That was after the offense tried here had transpired?

A. Yes.

Q. Did you succeed Mr. Tschetter?

A. That is right.

Q. Did you have a file in your office relating to Taze Hamrick Gibson, this defendant?

A. We do.

Q. Is that file which you have in your hand; that file?

A. It is.

Q. It is one that was made at a time when your predecessor was in charge of the office?

A. It was.

125 Q. You, as director, became the custodian of those records which you have brought into court?

A. Yes.

Q. And you hold them now?

A. Yes.

Q. Are they now in the same conditions in which they came to you?

A. Yes.

Mr. PHILIP. That is all.

Mr. COVINGTON. No cross-examination.

126 HOWELL TSCHETTER, being called as a witness by the government, and affirming that he would tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. PHILIP:

Q. You may state your name?

A. Howell Tschetter.

Q. Where do you live now?

A. My present home is at Denver, Colorado.

Q. Was there a time when you were the director of Civilian Public Service Camp No. 57, at Hill City, in this state?

A. Yes, there was.

Q. When did you become such director and how long did that situation continue?

A. I became director of this camp on the 19th of October 1942, and continued until September 15, 1944.

Q. You were, then, director of that camp on the dates of August 23rd to August 28th, inclusive?

A. I was.

Q. Directing your attention to the gentleman sitting

back of Mr. Covington, that is Mr. Taze Hamrick Gibson. Was he enrolled at that camp at that time?

A. Yes, he was.

Q. I show you here the record which was kept in that office while you were in charge, and which has been
127 produced here by your successor, Mr. Beechy. Will you produce from that file the record or file which shows when this man, Gibson, the defendant, enrolled at the camp? You have produced for me here a copy of an order to report for work of national importance dated August 8, 1944, which is a copy of Exhibit 3, already in evidence. Was that one of the files of that office when you were in charge?

A. Yes, it was.

Q. Pursuant to that order to report for work of national importance, did this defendant appear at the camp?

A. I [illegible] he did.

Q. When was that?

A. On the 23rd of August 1944.

Mr. PHILIP. May we agree that this is a copy of Exhibit 3?

Mr. COVINGTON. Yes; that is the same as Government's Exhibit 3.

Q. Did you have any conversation with this defendant while he was at the camp?

A. Yes, I did.

Q. Will you tell the Court the circumstances under which you had a conversation with him?

A. I was not actually in camp the first three days, I believe, that the defendant was in camp. Oscar Wiebe acted as acting director, and upon my return about noon on the 28th from a trip that I had made to Denver,
128 Mr. Gibson was at the camp and had just returned, I believe, from a physical examination in Hill City, and wanted to have words with me. We talked at length concerning his case, and I think it was in the neighborhood of an hour and a half, something of that kind, and I explained to him as best I could what the consequences would be of his leaving camp, and as I remember it he agreed to the effect that he understood that such would be the case. He then requested of me a statement, signed by myself, which would be an evidence of him having

completed the administrative process, including induction. Such statement I prepared for him and signed. I believe I turned over to him a copy of that statement, or possibly the original, and I have a copy of that statement in this file. I believe that is about the general extent of the conversation.

Q. Did he at that time tell you anything about his intention to leave the camp?

A. Yes, he did.

Q. Was it on his statement that he intended to leave the camp that you advised him about what would be the consequences of that?

A. That is correct.

Q. Did he request you to give him authority to leave the camp?

A. I don't believe that he requested that authority of me, and had he requested it I would have been
129 unable to have given it to him.

Q. Did you or anyone in authority at that camp give him any authority to leave the camp?

A. We did not. That was beyond our power.

Q. And there was no such authority given nor attempted to be given?

A. That is right.

Q. Did the defendant leave the camp at Hill City?

A. Yes, he did.

Q. And left without authority?

A. That is correct.

Q. What did he say to you as to his intention to leave the camp?

A. If I remember rightly the general gist of his statement on that occasion was that he wanted to make a test of the general situation of having been inducted into this camp.

Q. And then he left without authority?

A. That is right.

Mr. PHILIP. Cross-examine.

Cross-examination by Mr. COVINGTON:

Q. Is this a government operated camp?

A. It is not.

Q. By whom is the camp operated under the Selective Training and Service Regulations?

A. The camp is specifically operated by the Men-
130 nonite Central Committee with headquarters at Akron, Pa.

Q. For what length of time has it been thus operated?

A. Since its very beginning, the 19th of October 1942.

Q. Mr. Tschetter, how long had the defendant been at the camp when you got back from your trip to Denver?

A. I think it was a matter of some three days.

Q. When did he take his physical examination to determine his acceptability?

A. I believe it was on the morning of the 28th.

Q. Do you know why the delay?

A. It is customary to have three days conditioning period during which time one of the procedures is the physical examination, and it is not always convenient to take campers in on the first day. So sometimes there is this delay.

Q. Was it not due to the fact that the doctor who customarily gave the physical examination was not in his office until the 28th? Do you recall about that?

A. I have no specific information of that.

Q. Mr. Gibson never did perform any services at the camp, did he?

A. Not to my knowledge.

Q. As a matter of fact he came there, did he not, according to the records, for the purpose of exhausting the administrative remedies. Is that correct?

Mr. PHILIP. That is objected to as improper cross-examination.

131 THE COURT. Sustained.

Q. I show you a copy of a letter which is signed by Paul G. Tschetter, addressed to J. N. Weber, National Service Board, Washington, D. C., to which is attached a copy of a letter from Taze Hamrick Gibson addressed to Paul Tschetter. I will ask you if that is a part of these files which you have identified?

A. It is a part of the files which I have identified.

(Defendant's Exhibit A marked for identification.)

Q. I show you that letter and the form attached to it and ask you what that is, please?

A. This is a cover letter from Washington, D. C., National Headquarters, Selective Service, and the specific branch of the Camp Operation Section, signed by Walter Lindstrom. The second part is Selective Service Form 221, which is the preinduction physical examination.

(Defendant's Exhibit B marked for identification.)

Q. I hand you that and ask you to identify that?

A. This is a part of the personnel record completed on the 24th day of August 1944, and is a form which the camp superintendent, project superintendent, had his secretary execute relative to the previous work Mr. Gibson had done before entering camp.

(Defendant's Exhibit C marked for identification.)

Q. Is there anything in this file to indicate the physical examination that was given him under the direction
132 of this camp at Hill City, South Dakota.

A. There is.

Q. Where is that?

A. On the second page of National Service Board Form 107, is the report of the examination of this Mr. Gibson, signed by E. B. Hulst, who is camp doctor for our camp.

Q. That is the document which you now hold in your hand?

A. That is right.

(Defendant's Exhibit D marked for identification.)

Q. What is that, please?

A. This is the statement that Mr. Gibson asked me to prepare and is signed by me as of August 28, 1944.

(Defendant's Exhibit E marked for identification.)

Q. What is that you hold in your hand?

A. This is a letter prepared by Mr. Gibson and handed me at the time of his induction into camp.

(Defendant's Exhibit F marked for identification.)

Mr. COVINGTON. At this time the defendant offers in evidence Defendant's Exhibits A, B, C, D, E, F.

Mr. PHILIP. To which the government objects as incompetent, irrelevant and immaterial; not within the issues; not tending to serve or make any defense.

Mr. COVINGTON. I can describe them separately. Defendant's Exhibit A, may it please your Honor,
133 is a copy of a letter written to Mr. Tschetter by Weber of the National Service Board, which is a

form of the Selective Service System having to do with the operation of civilian public service camps, and we offer that letter in evidence. It states that the assignee reported to camp for the purpose of completing the administrative process incident to induction. We offer that exhibit. It is a part of the files which the government has made use of in connection with this man's testimony, and we offer this for the purpose of showing the extent to which he was actually in the camp at the time he is alleged to have departed.

The COURT. Your stipulation covers that. I don't think it is material, but I don't think it can do any harm. The objection will be overruled, with the understanding that photostatic copies will be substituted the exhibit will be received.

Mr. COVINGTON. With the same understanding we offer in evidence a letter from the National Headquarters, Selective Service System, dated September 5, 1944, sent to Mr. Lindstrom, to which is attached a copy of preinduction physical examination. The purpose of this letter to the camp was so that your files of this assignee may be completed. We offer that in evidence to show
134 that he was examined.

The COURT. In view of the stipulation I don't see the necessity for that. I don't think it is material at all.

Mr. COVINGTON. This shows acceptance and the preinduction physical examination which is not covered in the stipulation. The stipulation did not mention his being examined.

The COURT. The stipulation mentions the fact he was examined.

Mr. COVINGTON. Does it mention he was examined on preinduction physically?

Mr. PHILIP. No. Nothing said about preinduction physical.

Mr. COVINGTON. We offer in evidence Exhibit B.

Mr. PHILIP. Objected to as wholly immaterial.

The COURT. It will be received.

Mr. COVINGTON. At this time we offer in evidence the personnel record of this camp dated August 24, 1944, showing his background before coming to camp, and his

occupation, and furthermore that he walked out of camp on August 28, 1944, defendant's Exhibit C.

Mr. PHILIP. Same objection.

The COURT. Received.

Mr. COVINGTON. At this time we offer in evidence that part of the camp file marked Defendant's Exhibit
135 D, entitled "Individual Record of Campee", showing the statement of the defendant, Taze Hamrick Gibson, as to his physical condition, and the second page being the certificate of Dr. E. B. Hulst, who is the examining physician, stating his physical condition as of the date of examination. We offer in evidence Exhibit D.

Mr. PHILIP. Same objection.

The COURT. Received.

Mr. COVINGTON. At this time the defendant offers in evidence Exhibit E, which is the statement signed by Mr. Tschetter, dated August 28, 1944, as to the facts concerning his coming to the camp and his leaving the camp.

Mr. PHILIP. Same objection.

The COURT. Received.

Mr. COVINGTON. At this time the defendant offers in evidence Defendant's Exhibit F, which is a letter from Mr. Gibson to Mr. Tschetter, explaining the reasons why he cannot stay at the camp. We offer in evidence Defendant's Exhibit F.

Mr. PHILIP. Objected to as immaterial, and wholly self-serving.

The COURT. I agree with you, but due to the fact there is no jury here the objection will be overruled and the exhibt received.

136 Q. Mr. Tschetter, how long did Mr. Gibson talk to you? I believe he was in the office about an hour and a half?

A. Something of that kind.

Q. Do you recall what the conversation was between the two of you, in substance? I am not asking you to give all of the details or word for word what was said, but, generally what was covered in that conversation, as best you remember at this time?

A. The general gist of the conversation centered around the fact that he came to the camp to complete, as he termed it, the administrative process with regard to induc-

tion, and he was certain that it had been done. I tried to explain to him concerning his walking out, and what the results might be that would follow. That, in essence, is the sum total of the entire conversation.

Q. Do you recall what he said to you?

A. I would not definitely recall.

Q. Approximately. I am not asking you to say exactly. And what you said to him?

A. I belive that what I have said in essence so far is about the general situation. He wanted to get these administrative processes completed and spoke about the reasons why. I read his letter that he had written to me. Many of the reasons he gave were identical to that situation. And then the fact that I explained to him what leaving without absence would generally mean.

137 Q. What did you tell him, if you remember?

A. I believe I referred to the fact that sooner or later it would come to a trial of one kind or another.

Q. Anything else that you recall on that?

A. It is so long ago.

Mr. COVINGTON. That is all.

Redirect examination by Mr. PHILIP:

Q. Did you call his attention to the regulations requiring him to stay in camp?

A. Only as a voluntary situation. I had no authority to enforce his staying in camp by force of any type. Only calling his attention to the situation that he ought to stay in compliance with the order.

Q. That he ought to stay in compliance with the regulations but you had no authority to force him to stay?

A. No.

Q. But you did tell him the regulations required him to stay and that he should do so?

A. I believe I did.

Q. But he left in spite of your advice and suggestions?

A. He left that afternoon.

Q. And I believe you have already stated he was given no authority by anyone to leave?

A. That is right.

Mr. PHILIP. That is all.

Mr. COVINGTON. That is all.

138 JOHN J. MCKENNA, being called as a witness by the government and being duly sworn, testified as follows:

Direct examination by Mr. PHILIP:

Q. You may state your name?
A. John J. McKenna.
Q. Where do you live?
A. My legal residence is in New York state.
Q. Are you acquainted with the defendant?
A. I know the defendant as Taze Hamrick Gibson.
Q. What is your business or profession?
A. Special Agent, Federal Bureau of Investigation.
Q. You are with the F.B.I.?
A. Yes.
Q. Were you with the F.B.I. when you first met the defendant?
A. Yes.
Q. Where?
A. In Terre Haute, Indiana.
Q. Did you have occasion to talk with the defendant in Terre Haute, Indiana?
A. Yes.
Q. Who were present at the time you talked with the defendant there?
A. I talked to him on two different occasions. The first was on December 2nd at Clinton, Indiana. And on December 4th at Terre Haute, Indiana, at which
139 time he and I were there. Also part of the conversation was engaged in by the jailer in Terre Haute county jail in Terre Haute, Indiana.
Q. What was the occasion for your getting acquainted with him or getting in touch with him?
A. I received instructions from my special agent in charge to locate him and take him into custody.
Q. And it was in that connection that you became acquainted with him?
A. Yes.
Q. Was that in connection with this matter now pending?
A. Yes.
Q. Did you have a talk with him?

A. Yes, I did.

Q. Where?

A. At Terre Haute, Indiana.

Q. Any particular place in Terre Haute?

A. In the county jail in Terre Haute.

Q. Did you make a record of the matters you and he discussed?

A. Yes, I did. I made notes of the interview.

Q. And you wrote out a statement of his discussion?

A. Yes.

Q. Did you ask him when you had it completed whether that statement was true?

A. Yes, I did.

140 Q. What did he say as to that?

A. He said it was true.

Q. Did you ask him to sign it?

A. Yes, I did.

Q. Did he sign it or refuse to sign it?

A. He refused to sign it.

Q. Was that after he had told you that the statement was true?

A. Yes.

Q. Have you that statement with you?

A. Yes.

Q. Will you produce that please?

(Government's Exhibit 4 marked for identification.)

Q. I call your attention to this paper that has been marked Government's Exhibit 4, and which you have produced here. Is that the statement which you read to this defendant in the jail at Terre Haute, Indiana, and which he said was true?

A. This is the statement I wrote and he read himself, and then said it was true.

Q. It is the statement that he likewise refused to sign?

A. Yes.

Mr. PHILIP. We offer in evidence Exhibit 4.

Mr. COVINGTON. At this time the defendant objects to this statement for the reason that it is immaterial and incompetent. Furthermore it is prior to the ar-

141 raignment of the defendant and no adequate or sufficient predicate has been laid for the introduction of the exhibit in evidence.

The COURT. You say it is before what?

Mr. COVINGTON. I say no adequate foundation has been established for the introduction of the statement inasmuch at it is testimony by the F.B.I. man as to events that transpired prior to arraignment.

The COURT. I don't think the foundation is sufficient to admit it as a statement of the defendant.

Q. Will you tell the Court what was said between you and Mr. Gibson?

A. May I see my notes?

Q. You may.

Mr. COVINGTON. We would still object to any testimony as to what was said between the two.

The COURT. Objection sustained. There is no foundation laid for any confession on the part of this man. He was in custody and in jail at the time the statement was made. There is no sufficient foundation laid.

Q. Did you tell the defendant that you were making inquiry in regard to the situation in connection with the case that was to come up against him?

Mr. COVINGTON. That will be objected to for the same reason.

The COURT. Overruled.

112 A. Yes, I did discuss the issue with him.

Q. What did you say to him in regard to any statement that he might make?

A. I told him anything he told me, of course, could be used against him in court, anything he told me in the form of a signed statement. During the conversation I asked him why he left the camp; when he left it; whether he knew when he left the camp he was breaking regulations of the selective service system? To which he answered, yes.

Mr. COVINGTON. We object to this testimony and ask now that it be stricken for the reason it violates the ruling of the Court that no sufficient foundation has been laid.

The COURT. It does not require any foundation as to any statements made by the witness to the defendant, but without further foundation the witness would not be authorized in repeating anything which he claims the defendant said to him, because the foundation is insufficient.

Mr. PHILIP. May I inquire of the Court——

The COURT. There has been no showing as to whether or not there was any promises or threats or anything of the kind made to him, whether or not he had to make a statement.

Q. When you talked to the defendant, tell the Court whether you did or did not tell him that this was in
143 connection with the case which was then pending against him in South Dakota?

A. Yes; I did tell him that.

Q. Did you make any promises to him in event that he made statements?

A. No, sir; I did not.

Q. Did you tell him that you would make no promises to him?

A. Yes, I did. I told him he did not have to make a statement to me. That anything he did say to me in the form of a signed statement could be used against him in court. That it was his legal privilege not to make a statement to me if he so desired. I was going to use no force in making him give me a statement.

Q. You told him he did not need to make a statement at all?

A. Yes, I did.

Q. You held out no promises or threats to him?

A. No, sir; I did not.

Q. Did you offer him any kind of inducements to make a statement?

A. No, sir; I did not.

Q. Did he make the statement as far as you could see entirely voluntarily?

A. Yes.

Q. And in answering the questions in the con-
144 versation you had with him?

A. Yes.

Mr. COVINGTON. I want to ask the witness a question.

The COURT. Very well.

By Mr. COVINGTON:

Q. Mr. McKenna, you told him these things before you handed him the statement to sign, did you not?

A. No. I also told him prior to that time.

Q. When did you tell him? After he began to give you this information?

A. On December 2nd, which was Saturday, I went to Clinton, Indiana, to drive Mr. Gibson back from Clinton to Terre Haute. During the conversation we had in the car I told him I would be back Monday to talk to him about the information I wanted to obtain from him. That he didn't have to tell me at that time unless he wanted to, and if he did not plan to talk to me on Monday he could tell me then and I would not come back to see him on Monday. Why we went into that on Saturday afternoon on the drive from Clinton to Terre Haute. It was about fifteen miles.

Q. That was on Saturday?

A. That was on Saturday.

Q. And you came back on Monday and got the statement from him and handed it to him to sign?

A. After obtaining the statement I did hand it to him.

Q. You talked to him about this information and
145 then you handed it, the statement, to him and asked him but he refused to sign it?

A. That is right.

Q. Why did he refuse to sign it?

A. He told me he thought he didn't have to sign the statement, which I told him was true.

Mr. Covington. I say the objection we urged still stands under those circumstances.

The Court. Not as to the conversation he had with him. The conversation is permissible.

By Mr. Philip:

Q. You may tell the Court the conversation you had with the defendant.

A. First of all I asked him where he was born. He told me the date and place of his birth.

Q. What did he say?

A. He was born in Meridian, Mississippi. I asked him when he registered for selective service and where. He told me he registered with Local Board No. 1, at Eldorado, Arkansas.

Q. A, wasn't it?

A. No. 1, he told me. Eldorado, June 30, 1942. That

he was thereafter placed in classification 1A, sometime in September, 1942. Rather, in November, 1942, he was placed 1A. That he thereafter appealed the classification to the Appeal Board No. 2, Little Rock, Arkansas, on the ground he was entitled to 4D classification due
146 to his ministerial duties, and instead of being placed in 4D classification he was placed in 4E classification, which was the designated classification for conscientious objector. He also told me he previously had filed Selective Service Form 57, which was the prescribed form for conscientious objectors, to file to obtain their 4E classification. He told me his purpose in filing that Form 57 was to substantiate his claims as a minister of the gospel and not for the purpose of requesting 4E classification. He was classified, according to the information he told me, in classification 4E on May 8th, 1943, and that he thereafter requested his file to be referred to the National Director of Selective Service, which was done on or about September 1, 1943, and that he thereafter received notice from his draft board to report for physical examination at his local board on September 7, 1943. That he thereafter received notice to take another physical examination in Chicago, Illinois, on September 22nd, 1943. That he went to Chicago and took the physical, and that as far as he knew he was still being maintained in 4E classification. In June, 1944, he told me, he received notice from his draft board to report to Carlinsville, Illinois, for delivery to Public Service Camp 57, Hill City, South Dakota. That he thereafter contacted his draft board and again requested another physical which was granted him.

Mr. Covington. Wouldn't it be better for the
147 witness to testify rather than read from the statement?

The Court. Yes. Of course he has a right to refresh his recollection but he should not read the statement.

A. (Con't.) That he thereafter went into Chicago on July 25, 1944 for a physical examination. That he later received orders to report to Public Service Camp 57, Hill City. That he did report on August 23, 1944, and that upon arriving at the camp he presented Mr. Tschetter with a two page statement. We didn't go into what the statement involved. I didn't ask him what the statement

was. On August 28, 1944, he left the camp. At the time he left he knew it was against——

Mr. COVINGTON. Just a minute. That is a conclusion.

The COURT. It is part of the conversation.

A. (Con't.) I asked him whether he knew he was violating a rule of the Selective Service System. He said, Yes, he did. I asked him if he knew his actions were in violation of the selective service regulations. He said he did know it but he left with the intention of permanently remaining away from that camp.

Mr. PHILIP. Cross examine.

Cross-examination by Mr. COVINGTON:

Q. Did he tell you, Mr. McKenna, that he went there for the purpose of exhausting his remedies?

A. Yes.

148 Q. Did he tell you he thought he did not have to stay there because he was a minister of the gospel?

A. No, he did not tell me that.

Q. Did he tell you as to his status as a minister of the gospel?

A. He told me he was a minister of Jehovah Witnesses.

Q. Did he tell you he thought the draft board had illegally classified him?

A. Yes, he did.

Q. And that was the reason he would not stay at the camp, because he was a minister and had been illegally classified?

A. Yes, he did.

Mr. COVINGTON. That is all.

Mr. PHILIP. That is all.

Mr. PHILIP. Government rests.

Mr. COVINGTON. We will reserve the motion at this time until the close of the evidence.

The COURT. Do you care to make an opening statement?

Opening statement

Mr. COVINGTON. I merely desire to state to Your Honor that this defendant, as stated by the government's witnesses, registered under the Act; filed his questionnaire with Local Board A at Eldorado, and with that question-

naire he filed an abundance of proof, which was un-
149 disputed, to the effect that he was a minister of the gospel, a minister of religion, within the meaning of Sec. 53 of the Selective Service and Training Act; that he requested classification as a minister of religion exempting him from training service; that the local board illegally, arbitrarily and capriciously rejected his proof and refused to consider it and classified him as liable for training and service, contrary to the statute and contrary to the regulations, and without any evidence whatsoever that he was not a minister and exempt from all training as he claimed; and that by reason thereof the orders upon which this indictment is based are wholly void and illegal, and that the local board had no authority or jurisdiction to order him to report; the local board and Selective Service System violated his rights and privileges under the Act and regulations and deprived him of the right of due process to a full, complete and fair hearing, contrary to the Fifth Amendment to the United States Constitution, and, therefore, the defendant expects to prove that he is not guilty for the reason that he has no duty for training and service under the Act as charged in the indictment.

The COURT. As I gather it then, you rest your defense solely upon questions of law rather than fact?

Mr. COVINGTON. We rest them upon facts which
150 we expect to prove. The facts upon which we rest our defense have not yet been established in the evidence. We expect to offer the files of the draft board which are here, which corroborate these various statements that I have made and which will establish that this man has completely exhausted his administrative remedies and is now in position to obtain judicial review of the alleged illegality of the draft board's determination and finding. Because of that we rest the defense upon facts which shall be undisputed and which show and present to the Court in this case a pure question of law. But until we have established our evidence we will not be in position to urge these various legal conclusions that have been mentioned to Your Honor. Furthermore we feel, too, that there is an element in this case which the Court can and should consider, and that is, under the circum-

stances in the case in determining whether or not this man wilfully and knowingly violated the Selective Training and Service Act, in view of his good faith and honest belief that he was exempt from all training and service under the Act. That, of course, is covered by decisions rendered by the Supreme Court in the case of United States v. Murdock, reported in 298 U. S. which
151 shows a defense to an indictment based upon wilful intention to violate an act, that the good faith, honest intentions of the defendant may be considered by the Court in arriving at the guilt or innocence of the defendant.

The COURT. You may proceed and introduct your evidence.

(At this time a recess was taken until 1:30 P.M. this date, when the trial proceeded as follows:)

Mr. COVINGTON. May it please the Court, at this time the defendant will have identified the material parts of the cover sheet, draft board file, formed in and under the supervision of Local Board A, located at Eldorado, Arkansas. There has been introduced in evidence the questionnaire which is Government's Exhibit 1. Attached to and made a part of that questionnaire is Defendant's Exhibit G, which is a certificate of ordination.

(Defendant's Exhibit G marked for identification.)

Mr. COVINGTON. Together with Defendant's Exhibit H, which is an undated printed certificate purporting to be credentials of authority to the defendant, authorizing him to represent the Watch Tower Bible and Tract Society and Jehovah's Witnesses.

(Defendant's Exhibit H marked for identification.)

Mr. COVINGTON. Next for identification is Defendant's Exhibit I. This is the occupational questionnaire.
152 (Defendant's Exhibit I marked for identification.)

Mr. COVINGTON. Next for identification is Defendant's Exhibit J, which is a verified statement of Taze Hamrick Gibson to Local Board A.

(Defendant's Exhibit J marked for identification.)

Mr. COVINGTON. There has been referred to in the government's testimony what is known as Form 47, a special form for conscientious objectors, which the defendant asks that the Court have marked as Defendant's Exhibit K.

(Defendant's Exhibit K marked for identification.)

Mr. COVINGTON. Next is a statement dated November 11, 1942, signed by Gibson, addressed to Appeal Board No. 2, which is Defendant's Exhibit L.

(Defendant's Exhibit L marked for identification.)

Mr. COVINGTON. Next for identification is a letter addressed to National Headquarters from Gibson, dated November 18, 1942, being Defendant's Exhibit M.

(Defendant's Exhibit M marked for identification.)

Mr. COVINGTON. Next for identification is a letter dated November 20, 1942, signed by A. P. Reynolds, Chairman of the local board, addressed to the board of appeal.

(Defendant's Exhibit N marked for identification.)

Mr. COVINGTON. Next for identification is a letter dated November 20, 1942 addressed to Local Board A, signed by Troy Lewis, acting for the State Director of Arkansas.

153 (Defendant's Exhibit O marked for identification.)

Mr. COVINGTON. Next for identification is a letter from Troy Lewis, acting for the state director, addressed to Board of Appeal, dated December 2, 1942. Exhibit P.

(Defendant's Exhibit P marked for identification.)

Mr. COVINGTON. Next for identification is a letter dated February 16, 1943, addressed to Local Board A, signed by Troy Lewis, acting for the state director. Defendant's Exhibit Q.

(Defendant's Exhibit Q marked for identification.)

Mr. COVINGTON. Next for identification is a document entitled "Appeals Check List or Appeals Work Sheet", dated May 3, 1943, together with the attached papers, Defendant's Exhibit R.

(Defendant's Exhibit R marked for identification.)

Mr. COVINGTON. Next for identification is a letter from Troy W. Lewis to Local Board A, dated May 6, 1943, Defendant's Exhibit S.

(Defendant's Exhibit S marked for identification.)

Mr. COVINGTON. Next for identification is a letter dated May 14, 1943, addressed to Local Board A, received by Local Board A on May 20, 1943, signed by Taze Hamrick Gibson, to which is attached affidavits of Rising, Humphrey, Dixon and Britten, which were mailed to the local

board with a request that his case be reopened and considered entirely anew. Defendant's Exhibit T.

154 (Defendant's Exhibit T marked for identification.)

Mr. COVINGTON. Next for identification is a letter dated May 27, 1943, signed by E. L. Compore, State Director of Arkansas, addressed to Local Board A, Eldorado. Defendant's Exhibit U.

(Defendant's Exhibit U marked for identification.)

Mr. COVINGTON. Next is a letter addressed to National Headquarters, dated May 24, 1943, signed by Taze Hamrick Gibson, stamped received June 2, 1943. Defendant's Exhibit V.

(Defendant's Exhibit V marked for identification.)

Mr. COVINGTON. Next is a telegram dated May 26, addressed to National Headquarters, signed by Taze Hamrick Gibson, from Enid, Oklahoma, and stamped received June 2, 1943. Defendant's Exhibit W.

(Defendant's Exhibit W marked for identification.)

Mr. COVINGTON. Next for identification is a two page typewritten letter dated May 24, 1943, addressed to National Headquarters and signed by Taze Hamrick Gibson. Defendant's Exhibit X.

(Defendant's Exhibit X marked for identification.)

Mr. COVINGTON. Next is a letter dated June 4, 1943, from E. L. Compore, State Director, to Local Board A. Defendant's Exhibit Y.

(Defendant's Exhibit Y marked for identification.)

Mr. COVINGTON. Next is a letter dated July 1,

155 1943, signed by Patrick C. Harris, addressed to Local Board A, on Arkansas State Headquarters stationery, to which is attached letter dated June 25, 1943, on the stationery of the National Headquarters of the Selective Service System, addressed to State Director, and signed by Simon F. Denkle, Colonel, acting for National Director. Defendant's Exhibit Z.

(Defendant's Exhibit Z marked for identification.)

Mr. COVINGTON. Next is a letter dated July 2, 1943, addressed to State Director, signed by the Clerk of Union County Local Board A. Defendant's Exhibit A-1.

(Defendant's Exhibit A-1 marked for identification.)

Mr. COVINGTON. Next is letter dated August 17, 1943,

from Troy W. Lewis, acting for State Director of Arkansas, addressed to Local Board A. Defendant's Exhibit B–1.

(Defendant's Exhibit B–1 marked for identification.)

Mr. COVINGTON. Next is an order referring registrant to another local board for preliminary physical examination only dated September 10, 1943. Defendant's Exhibit C–1.

(Defendant's Exhibit C–1 marked for identification.)

Mr. COVINGTON. Next is report of examination dated September 22, 1943, the date appearing on the second page. Defendant's Exhibit D–1.

(Defendant's Exhibit D–1 marked for identification.)

Mr. COVINGTON. Next is a letter addressed to Taze Hamrick Gibson, signed by Troy W. Lewis, acting
156 for the State Director of Arkansas, dated October 22, 1943, which is Defendant's Exhibit E–1, and attached to that is a long hand letter from Taze Hamrick Gibson, addressed to the State Director of Arkansas.

(Defendant's Exhibit E–1 marked for identification.)

Mr. COVINGTON. Next is a letter dated June 5, 1944, addressed to the Local Board at Carlinsville, Illinois, signed by Lt. Col. Buck, Illinois State Headquarters, Selective Service System. Defendant's Exhibit F–1.

(Defendant's Exhibit F–1 marked for identification.)

Mr. COVINGTON. Next is a letter dated June 12, 1944, addressed to Local Board No. 1, Carlinsville, Illinois, signed by Clerk of Local Board A, Eldorado, Arkansas. Defendant's Exhibit G–1.

(Defendant's Exhibit G–1 marked for identification.)

Mr. COVINGTON. Next is conscientious objector's report dated June 15, 1944. Defendant's Exhibit H–1.

(Defendant's Exhibit H–1 marked for identification.)

Mr. COVINGTON. Next is order to report for work of national importance dated June 26, 1944. Defendant's Exhibit I–1.

(Defendant's Exhibit I–1 marked for identification.)

Mr. COVINGTON. Next is letter dated June 3, 1944, addressed to Taze Hamrick Gibson, signed by the Clerk of Carlinsville, Illinois, Selective Service Board No. 1. Defendant's Exhibit J–1.

157 (Defendant's Exhibit J–1 marked for identification.)

Mr. COVINGTON. Next is a letter dated July 3, 1944, addressed to Gibson from the Clerk of Local Board A, Eldorado, Arkansas. Defendant's Exhibit K–1.

(Defendant's Exhibit K–1 marked for identification.)

Mr. COVINGTON. Next is an order to report for pre-induction physical examination, dated July 3, 1944, which is Defendant's Exhibit L–1.

(Defendant's Exhibit L–1 marked for identification.)

Mr. COVINGTON. Next is an order to report for pre-induction physical examination dated July 22, 1944. Defendant's Exhibit M–1.

(Defendant's Exhibit M–1 marked for identification.)

Mr. COVINGTON. Next is a report of physical examination dated July 25, 1944, the date appearing on the last page. Defendant's Exhibit N–1.

(Defendant's Exhibit N–1 marked for identification.)

Mr. COVINGTON. Next is a certificate of physical fitness dated July 25, 1944. Defendant's Exhibit O–1.

(Defendant's Exhibit O–1 marked for identification.)

Mr. COVINGTON. Next is a letter dated July 28, 1944 addressed to Local Board A from the Clerk of the Board No. 1, Carrollton, Illinois. Defendant's Exhibit P–1.

(Defendant's Exhibit P–1 marked for identification.)

Mr. COVINGTON. Next is a letter dated July 28, 1944, from Troy W. Lewis, acting for State Director of
158 Arkansas to the National Director of Selective Service. Defendant's Exhibit Q–1.

(Defendant's Exhibit Q–1 marked for identification.)

Mr. COVINGTON. Next is a letter dated July 28, 1944, addressed to Local Board A, from the Clerk of the Carrollton, Illinois Local Board 1, being Defendant's Exhibit R–1.

(Defendant's Exhibit R–1 marked for identification.)

Mr. COVINGTON. The order to report for work of national importance is omitted because it is Government's Exhibit 3.

The next and last is a letter dated November 27, 1944 on the stationery of the Arkansas State Headquarters, addressed to Local Board A, signed by Higgins, acting for State Director. Defendant's Exhibit S–1.

(Defendant's Exhibit S–1 marked for identification.)

Mr. COVINGTON. In connection with these various ex-

hibits that have just been identified it may be stated for the purpose of the record that these exhibits, together with Government's Exhibits 1 to 3, constitute all of the material parts of the selective service questionnaire relating to the history and background of this man's case while before Local Board A at Eldorado, Arkansas, together with the induction process that was thereafter pursued pursuant to the Act and regulations. At this time the defendant offers in evidence all of the exhibits,
Defendant's Exhibits G to Defendant's Exhibit
159 S-1, inclusive. And in connection with this offer the defendant says that the undisputed evidence shows that the Watch Tower Bible and Tract Society, and Jehovah's Witnesses, are a recognized religious organization, and that there is no evidence in the file disputing these facts; that the undisputed evidence shows from these exhibits that the defendant was trained for the ministry in that organization; was duly recognized as a regular minister and later as an ordained minister, long before he registered under the draft law, and that he was at all times acting as a duly ordained, full-time missionary evangelist with the Watch Tower Bible and Tract Society, and there is no evidence in the file disputing this fact; that these documents show that the defendant was recognized by the Watch Tower Bible and Tract Society and Jehovah's Witnesses at all times as an ordained minister and missionary evangelist and there was no evidence in the file to dispute such fact; these documents show that the defendant regularly performed his duties and devoted his full time to the furtherance of the activities of the Watch Tower Bible and Tract Society and Jehovah's Witnesses as such minister, and there was no evidence in the file disputing that fact; the documents show that the defendant had dedicated his entire life to the furtherance of the functions of Jehova's Witnesses and the activity of the Watch Tower Bible and Tract Society as a minister of the gospel and there is no evidence in the file to dispute this fact.

160 These documents show that he stood in relation to Jehovah's Witnesses and the Watch Tower Bible and Tract Society in the same way and in the same degree as to the orthodox clergy and other religious organiza-

tions, and there is no evidence in the file disputing that fact. The documents further show that there is no evidence in the file that this defendant fictitiously claimed the classification of 4D as a minister, or that he impersonated a minister of the gospel or minister of religion. Moreover these documents show that there is no evidence establishing that he was not actually ordained and authorized by the Watch Tower Bible and Tract Society and by Jehovah's Witnesses and that he was not a minister within the meaning of Section 5-d of the Act. These documents further show that there is no evidence that the defendant does not come within the definition of a minister of religion, as appears in Opinion No. 14, of the National Headquarters of the Selective Service Opinions relating to ministerial status of Jehovah's Witnesses, and the undisputed evidence shows that he is a minister of religion within the meaning of that Opinion No. 14. Next, that these documents show that the only reason he was not given this exempt status under the Act and regulations was because his name did not appear on the certified list filed with the State Director of Arkansas, and thus the board and the appeal board arbitrarily re-
161 fused and failed to exercise their duty and review his motions filed on the evidence under the Act to consider his claim for exemption. Therefore, these various documents show that there is no evidence that he was not a minister as claimed: Furthermore that the evidence shows that the board acted dishonestly and contrary to the facts, and the agency acted contrary to the law and the selective service opinions, and contrary to undisputed evidence in excess of their statutory authority, without jurisdiction, without support of any evidence showing the defendant was not a minister, contrary to the evidence and contrarily to the Act and regulations. They acted arbitrarily and capriciously and in violation of defendant's rights under the Act and regulations, and in violation of the due process clause of the Fifth Amendment. And in addition to that, that the board violated the defendant's procedural rights in failing to reopen his classification and reconsider his case anew as requested, which was arbitrarily and contrary to the Act as well as the

Selective Service Opinions and the regulations promulgated under the Act.

This offer is made in connection with our defense to the indictment that the order upon which the indictment is based is void, illegal, contrary to the Act, contrary to the regulations and the Constitution of the United States, and inasmuch as this is a trial to the Court I submit that not only is this evidence material, but that no harm
162 will be done to the government by receiving it. This is my offer of proof of the entire file.

Mr. PHILIP. To that offer of proof the government objects for the reason it is wholly irrelevant to any of the issues. It is wholly immaterial and is not competent to establish any defense to the charge. Further, the proof sought is in direct violation of the rules of evidence laid down by the Courts holding that the matter of classification is wholly within the province of the Selective Service only and that proof of erroneous classification by the Selective Service Local Board is not a defense to a criminal charge for violation of the Selective Training and Service Act, and regulations adopted thereunder. Further, that this charge is one of deserting a work camp and not violating any order of the Arkansas board.

Mr. COVINGTON. Your Honor, in answer to that objection, if the government's position is sustained and the position Mr. Philip has taken is correct, then I urge that the construction Mr. Philip places upon the Act and regulations so as to require a defendant who is exempt under the Act to remain in camp or do work of national importance as a condition precedent to obtaining judicial review ——

Mr. PHILIP. Just a minute. I am going to interrupt. I never said anything of the sort and you know it.

Mr. COVINGTON. As a reason for denying him a
163 right to challenge the classification in defense to the indictment. If that construction that he has placed upon the Acts and regulations, and if accepted by the courts, would convert the Act and regulations into a bill of attainder contrary to Sec. 3, and Sec. 9, Article I of the Constitution; that he has transferred and surrendered the judicial power of United States Courts to the draft board, contrary to Article III of the federal Constitution. It would

deny the defendant the right to prove he has no duty to render either training or service under the Act, and to make his defense to the indictment contrary to the due process clause of the Fifth Amendment of the federal Constitution. If this construction was accepted it would deny and abridge the right of the defendant to have a trial by the Court as to all of the issues involved in the case, contrary to the Sixth Amendment. Furthermore, it would permit the conviction of the defendant without evidence as to his duty and responsibility under the Act, and, in effect, would deny him the right of counsel contrary to the Fifth and Sixth Amendments to the federal Constitution. That, therefore, it would permit a local board to make a classification, and would permit the defendant to be found guilty of violating a duty and thus convert the Act and regulations into an ex post facto law, contrary to the Clause 3, Sec. 9, Article I, of the Federal Constitution.

That is our offer and our view as to the law
164 relative to the objection made to this offer of testimony.

Mr. PHILIP. We move the speeches of counsel be stricken from the record and that the offer be allowed to stand and that it be denied by the Court.

Mr. COVINGTON. I would like to say this. That was not a speech. I was merely trying to close the record on the grounds I am urging here in answer to the construction placed upon the Act. The record is made now and that is my sole purpose. I make myself plain to the Court and I am not here to make a speech, but I am here to make a record and protect this man's rights.

The COURT. I think the remarks of counsel, under the circumstances, were proper and right and may remain in the record. In other words, I want every man who represents a defendant in this court to have any record he wants that is consistent with the facts. Because you have an opinion and no matter how firmly I am convinced what the law is, every once in a while I have found out I am wrong. I never want to deny a man the right to review any findings of mine upon any proposition he thinks material to the case. These exhibits that are offered in evidence, as I understand from the remarks of counsel,

pertain solely to the matter of the classification of the defendant in this case by the Selective Service board. I don't think this Court has anything to do with that. I don't think that it in any way affects any of the issues in
165 this case, and because I am firmly convinced as to that proposition I am going to sustain the objection to the introduction of the evidence.

Mr. COVINGTON. I respectfully except to the ruling for each of the reasons stated.

The COURT. Exception allowed.

166 ALICE SIMPSON, being called as a witness by the defendant, and being duly sworn, testified as follows:

Direct examination by Mr. COVINGTON:

Q. Your name is Alice Simpson?

A. That is right.

Q. Where are you living at present?

A. Higginsville, Missouri.

Q. Before that did you live in Eldorado, Arkansas?

A. I did.

Q. Were you living in Eldorado, Arkansas, during the years 1940 to 1942?

A. That is right.

Q. During the time that you lived in Eldorado, Arkansas, did you have occasion to become acquainted with the defendant, Taze Hamrick Gibson, in this case?

A. Yes, I did.

Q. Just under what circumstances and conditions did you get acquainted with Mr. Gibson?

A. In 1941, October or November, about the 16th day, he came to Eldorado to carry on his ministerial work there.

Q. Do you know whether or not he was assigned to a regular congregation?

Mr. PHILIP. Objected to as wholly incompetent, irrelevant, and immaterial.

The COURT. Sustained.

MR. COVINGTON. In view of the ruling that has
167 been made by the Court on the exhibits, and in view of the ruling that has been made on this

particular question, there is quite a number of questions that I desire to propound that would elicit information and evidence as to his activity as a minister in charge of that congregation, located at Eldorado, and in this connection and in view of the Court's ruling, I would like the privilege of stating what this witness would testify to if permitted to do so.

The COURT. You may make your offer of proof.

Mr. COVINGTON. This witness would testify, if permitted to do so, that in the fall of 1941, the defendant, Taze Hamrick Gibson, was assigned by Watch Tower Bible and Tract Society and Jehovah's Witnesses, to preside over and build up a congregation of Jehovah's Witnesses in Eldorado, by carrying on his ministerial work, presiding over the congregation and performing regular ceremonies that are ordinarily performed by ministers of Jehovah's Witnesses in charge of a congregation, and that the congregation of Jehovah's Witnesses looked upon this defendant as standing in the same relation to Jehovah's Witnesses and the Watch Tower Bible and Tract Society as do the orthodox clergy of the recognized, orthodox denominations. That in addition to his regular performance of these congregational duties, which required him to deliver sermons regularly two times
168 each week, and also engage in full time missionary evangelistic work, which required making calls from house to house, door to door, and build up and conduct Bible studies without charge in people's homes, and also to call back on people who were interested in the work he was doing, and that he carried on this work from the time he came there until and including the month of October, 1942, when he left Eldorado, and has since, according to information, been carrying on missionary work elsewhere. That during the time that he was in Eldorado his whole time and his full time was devoted exclusively to the performance of these ministerial duties and missionary evangelistic work. And also that he was recognized by the Watch Tower Bible and Tract Society and recognized by that congregation as a regular ordained minister of the gospel, and that they all looked upon him as their minister. And this evidence would be offered in connection with our contention that judicial review would be available in

defense to the indictment, and not only if it is available would be confined to a review of the file itself, which has been offered, but also, Your Honor, can and should consider this evidence de novo upon the question of the authority and jurisdiction of this board to order a man that Congress said should be exempt from training and service. That is the offer and purpose of the proof thus proposed.

Mr. PHILIP. Same objection as made to the former offer.

169 The COURT. Same ruling.

Mr. COVINGTON. We except for the reasons already set forth in the other exception. It is understood that our exceptions are taken on the same grounds this time as were taken to the former exception as to the denial and rejection of those documents?

The COURT. That is as I understand it.

Mr. COVINGTON. That is all.

Mr. PHILIP. That is all.

170 TAZE HAMRICK GIBSON, being called as a witness in his own behalf, and being duly sworn, testified as follows:

Direct examination by Mr. COVINGTON:

Q. Would you please state your full name, your age, and where you were born?

A. Taze Hamrick Gibson. Age 22. Born in Meridian, Mississippi.

Q. What is your father's name?

A. John Dodds Gibson.

Q. Your mother's name?

A. Maiden name?

Q. Yes?

A. Mattie Hamrick.

Q. Where does your father and mother live?

A. Collinsville, Mississippi.

Q. What town is that near?

A. About 14 miles northwest of Meridian.

Q. Where were you raised up, Mr. Gibson?

A. Collinsville. From the time I was about six years old.

Q. Did you ever live in Meridian?
A. Yes.
Q. When?
A. I was born in Meridian and lived there until about 1927 or 1928.

171 Q. After 1927 or 1928, you and your family moved then to Collinsville?
A. Yes.
Q. How long did you stay at Collinsville?
A. Until I left home to go into minister work.
Q. What year?
A. June 1940.
Q. What schooling did you have? Where did you attend school?
A. I attended the Watch Tower Bible and Tract Society bible classes held in Meridian, Mississippi.
Q. What public schools did you attend?
A. Collinsville Consolidated high school.
Q. How long did you attend that school?
A. Until the fall of 1939.
Q. Did you also attend grade schools before you entered high school at Collinsville?
A. Yes.
Q. Was that part of the Collinsville consolidated school?
A. Yes.
Q. When did you first enter the Collinsville consolidated school? What year, if you recall?
A. I believe 1928 or 1929.
Q. When did you discontinue high school at Collinsville?
A. In the fall of 1939.

172 Q. What other training have you had; education have you had in addition to that received at the Collinsville Consolidated School?
A. In addition to that I have received both instruction and training at Watch Tower Bible and Tract Society bible classes held twice a week in Meridian, Mississippi.
Q. Were those classes conducted by the congregation as a school in preparation for those desiring to become ministers?
A. Yes. Those attending were getting instructions so as to employ themselves to be ministers of the gospel.
Q. You are one of Jehovah's Witnesses?

A. Yes.

Q. Were your father and mother Jehovah's Witnesses?

A. Yes.

Mr. PHILIP. I think this is immaterial.

The COURT. This is the defendant in this case and within reasonable limitations I think he should be permitted to show what he has done and what kind of a man he is. Overruled.

Q. Now, Mr. Gibson, did your father as one of Jehovah's Witnesses bring you up as one of Jehovah's Witnesses and give you training in the bible at home?

A. Yes, yes, he did.

Q. Was he a minister of the gospel?

173 A. Yes.

Q. When did your father begin to give you training in preparation for the ministry?

A. Ever since I can remember. I found out from the bible concerning God's provision for obedient persons all my life.

Q. When did your father begin to give you regular instructions in preparation for the ministry, at home?

A. About 1935 I began to receive regular instruction. That is, I convinced myself that I wanted to enter the ministry work and make it my life work. Before then I had attended also the bible classes in Meridian.

Q. After you made up your mind to become a minister in 1935 did your father give you instruction at home as well as what you received at the bible class?

A. Yes, he did.

Q. How long did you receive that instruction regularly from your father, as minister, and at the Watch Tower Bible and Tract Society school?

A. Until I left the vicinity in 1940.

Q. Before you left the vicinity in 1940 did you become a regular minister, were you ordained?

A. Yes, I was ordained, at solemn, serious ceremony in Birmingham, Alabama.

Q. Under whose auspices?

Mr. PHILIP. Objected to as wholly immaterial.

174 The COURT. We will let the witness answer.

A. In 1938, in Birmingham, I was ordained by water immersion and the ceremony was carried out and

conducted by a representative or minister from the Watch Tower Bible and Tract Society, and he delivered a sermon on baptism, what baptism meant and what ordination meant, and pointed out when being baptized it symbolized consecration to Jehovah God, to do His will and that His will should be preached to all nations. After this sermon, which lasted about thirty minutes, then prayer was offered and those who were to be ordained or immersed went to the immersion pool where this minister of the gospel from the Watch Tower Bible and Tract Society performed the immersion. Then I, among others, immediately began to carry out our agreement by engaging in the minister work from then on. I went out from house to house in the city of Birmingham and began to preach the gospel to all of those who would listen.

Q. Since your ordination have you been regularly preaching the gospel that you have mentioned?

A. Yes, I have.

Q. The work that you did then, where did you carry that on? After ordination. What place?

A. After my ordination I carried on in Collinsville, Mississippi until 1940. In that vicinity.

Q. After 1940 where did you go?

A. I entered full time ministry work and went to
175 Hattiesburg, Mississippi.

Q. What sort of work did you do there?

A. I performed missionary and evangelistic work, establishing congregations, by conducting bible studies in the people's homes and by going from door to door as Christ and the apostles did, as shown in our bible, Acts 20:20, and Mark 6, and other places, and I followed the example set by those Christians, and in that way systematically preached the gospel in the city of Hattiesburg.

Q. What other method did you employ in that regard in Hattiesburg?

A. I also employed the public method. I had congregations, bible study groups, and also we did our work on the streets of Hattiesburg.

Q. How long did you carry on your missionary and evangelistic work and ministerial work in Hattiesburg?

A. Until the fall of 1940.

Q. Then where did you go?

A. To Macon, Mississippi.

Q. At Macon, Mississippi did you carry on your missionary and evangelistic work there in the same way you did at Hattiesburg?

A. Yes.

Q. And for how long?

A. Until the late summer of 1941.

Q. And after late summer of 1941, where did you go?

176 A. To Eldorado, Arkansas.

Q. What did you do in Eldorado, Arkansas?

A. There I presided over the local congregation of Jehovah Witnesses, and also presided in the ministry work there; full time ministerial work. That was my sole occupation in the city of Eldorado, and also in Union County in which Eldorado is located. I carried on my minister work there by going from house to house and also we had public meetings.

Q. Did you also regularly preach to the local congregation there?

A. Yes. At least twice each week.

Q. How many hours each week or each month would you actually devote to preaching and to preparation?

A. Around 150 to 200 hours a month in the ministerial work.

Q. Did the congregation of Jehovah's Witnesses look upon you as standing in relation to them as do the orthodox clergy to their congregations?

A. Yes. I was presiding.

Mr. PHILIP. I object to that as calling for the conclusion of the witness, for a statement of fact.

The COURT. It calls for his conclusion. The answer may go out.

Mr. COVINGTON. I will withdraw that.

177 Q. Did the Watch Tower Bible and Tract Society and Jehovah's Witnesses regularly appoint you to represent them as their minister in Eldorado?

A. Yes; I was appointed by Watch Tower Bible and Tract Society to be presiding minister there.

Q. Was your ordination recognized by Watch Tower Bible and Tract Society?

A. Yes, it was.

Q. Were you sincere in your work you were doing in Eldorado?

A. Yes; I surely was.

Mr. PHILIP. Objected to as wholly self serving.

The COURT. Let the answer stand.

Q. While you were at Eldorado did you register under the Selective Training and Service Act of 1940?

A. Yes, I did.

Q. And with what board?

A. Local Board A, Union County.

Q. At that time were you carrying on your missionary and evangelistic work?

A. Yes.

Q. Presiding over a congregation?

A. Yes.

Q. Did you file your questionnaire with the local board, which is Government's Exhibit 1?

A. Yes. I filed it and furnished proof that min-
178 ister work was my occupation and I should be given 4D classification.

Q. After you filed your questionnaire with the local board how long did you continue in your ministerial work in Eldorado?

A. Until September or October, I believe.

Q. Of what year?

A. The same year, 1942.

Q. That is the same year you registered?

A. Yes.

Q. Just a year after you came to majority?

A. Yes.

Q. Then where did you go?

A. My next assignment by the Watch Tower Bible and Tract Society was Muskogee, Oklahoma, and after that I lived a short time in McAlester.

Q. How long were you in Muskogee?

A. Two and one half months.

Q. What did you do there?

A. I continued in my full time minister work in Muskogee.

Q. You continued to preach the gospel in the same manner?

A. Yes.

Q. Did you do the same sort of work in Muskogee that you did in Eldorado?

A. Yes.

179 Q. When you left Muskogee, where did you go to?

A. Enid, Oklahoma.

Q. How long were you at Enid?

A. Until July 1943.

Q. What did you do in Enid?

A. I continued in my preaching work there at Enid. In the same manner as other towns.

Q. And you carried on that work in the same way that you did in Eldorado?

A. Yes.

Q. Did you perform the same sort of duties?

A. Yes.

Q. Upon leaving Enid where did you go?

A. I went to Verdun, Illinois.

Q. Why did you go to Verdun?

A. On assignment there by the Watch Tower Bible and Tract Society.

Q. How long did you remain at Verdun, Illinois?

A. Until the last of October 1943.

Q. And then where did you go?

A. To Geneseo, Illinois.

Q. What did you do there?

A. I was sent there to establish a local congregation of Jehovah Witnesses and also to daily preach the gospel and to perform missionary and evangelistic work in the homes of the people and also publicly.

180 Q. Did you carry on your dealings there in the same way you did in Eldorado?

A. Yes, in the same manner.

Q. After staying at Geneseo when and where did you go to?

A. Along about April, the last of April, I went to Whitehall, Illinois.

Q. How long did you stay there?

A. Until about the last of October or first of November.

Q. Then where did you go?

A. Clinton, Indiana.

Q. What did you do at Clinton, Indiana?

A. I was also sent there by Watch Tower Bible and

Tract Society to perform missionary and evangelistic work and to generally preach the gospel from house to house and publicly.

Q. Where are you assigned now to do this work?

A. Clinton, Indiana.

Q. How many hours did you devote each month to the performance of your missionary and evangelistic work in Clinton, Indiana, and these other places you have mentioned?

A. About 175 hours a month or over.

Q. In the performance of all of these duties did you do it under the direction of the Watch Tower Bible and Tract Society or Jehovah's Witnesses?

A. Yes.

Q. Are you now in good standing with Watch Tower Bible and Tract Society as one of its ordained ministers?

181 A. Yes, I am special representative of the Watch Tower Bible and Tract Society, working in Clinton.

Q. What is your purpose in preaching the gospel in the manner that you have indicated? What is the purpose of building up congregations? You mentioned the building of congregations.

Mr. PHILIP. That is objected to as immaterial.

The COURT. Sustained. I don't think we will take the time to go into that. I have been liberal with you in allowing you to give the background of this man, but I think that is as far as you ought to go.

Mr. COVINGTON. I should like to except to the Court's ruling at this time and would like to make an offer of proof in connection with his testimony, which is offered not for the purpose of showing his background, for I agree with you you have been quite liberal in allowing me to develop his background, but now I say, in connection with what I have said since the trial began, we are entitled to offer this proof on the question of review of the want of authority on the part of the local board, and I would like to make this offer of proof. I desire to establish by this witness that as a part of his duties and

182 in addition to his missionary and evangelistic work, which is 175 hours a month, at Eldorado and at other places he performed congregational duties. That is to

say, that at least once or twice each week, before congregations located in these various cities where he was assigned, he delivered sermons and bible discourses upon the bible and prophecies to the congregation at least once each week; and that in performance of his congregational duties he presided over all of the meetings of the congregation and acted as a presiding minister; he looked over the affairs of the congregation and taught them and others in ways and means of properly carrying out their covenant obligations as followers of Christ Jesus, and that he stood in relation to the congregation in the same way as do ministers of the orthodox denominations. In addition to that I propose to show by this witness that the 175 hours each month that was devoted to evangelistic and missionary work required him to call from house to house and place to place in the primitive way as did Christ Jesus and the apostles who stated they went from house to house and place to place for the purpose of preaching. Furthermore he did this house to house
183 preaching as a practical way of reaching the people in their homes, as it is a known fact that very few people can be persuaded to come to a congregation and he considers it an obligation to take this message to people into their homes and leaving bible tracts with them, which he does for no selfish purpose but for charitable and benevolent purposes. That in addition to that he taught publicly upon the streets by means of the distribution of bible literature, which is a symbolic way of preaching and which is the way that Christ Jesus and the apostles did, and is practical for the reason he did it in order to reach people that he was unable to contact while calling from house to house. In addition to that he made a practice of calling back upon the people he met and who showed an interest in his work and there discussed with them and answered bible questions and explained reasons as to the way they should study, and if a person was interested sufficiently he would establish in a home bible study and there conduct one hour bible study course each week in the people's home without any obligation at all; and that the reason he did this was for the purpose of showing the people that the Kingdom or government of Al-
184 mighty God, which is a righteous government, to which Christ Jesus taught him to pray, was their

only hope of escape from the battle of armegeddon, spoken of in Revelations; and that he was required to preach this gospel as one of the followers of Christ Jesus as a witness unto all nations because he witnessed to all mankind that with Almighty God and Christ Jesus they are being led from this battle of Armegeddon, which is a place of everlasting destruction from which proceed the awful demon, and that he sees no circumstantial evidence that this kingdom is near at hand, and the circumstances mentioned by Christ Jesus in Matthew 24th Chapter, Mark 13th Chapter and Luke 21st Chapter, show positively that the work he has to do is of national importance in order that the people can see their way to again live everlastingly in the kingdom of Almighty God, which will bring peace and prosperity and happiness to the people; and that he taught this gospel and this message to the people without any profit; that he received a small allowance of $25.00 a month from the society; that he gets help from his folks at home and in that way he sustains himself, and that he has done this seriously and
185 honestly and for the sole purpose of magnifying the name of God, and for the purpose of doing good unto other persons; that he has not engaged in it for selfish purposes; and he has not engaged in any secular work of any kind or character since he has been in Eldorado, Arkansas. And that he showed all of these things to his board. That is my offer, Your Honor, and I would like to say that it is offered on the question of authority and that the Court has the right to review the classification as a defense to the indictment, and that the Court should take this evidence de novo to ascertain the lack of authority of the board to order this man to do work of national importance.

Mr. PHILIP. Same objection as to the other offers.

Mr. COVINGTON. May I add this: I may state that we say that the government's construction placed upon the Act which would deny the Court the right to receive this evidence in defense to the indictment, would abridge the rights of the defendant for each and every one of the reasons that I stated in answer to the objection made by the government to the offer of the various documentary exhibits, G to S-1, inclusive.

Mr. PHILIP. Same objection.

The COURT. Sustained.

186 Mr. COVINGTON. Exception.

The COURT. Exception allowed.

Q. Now, Mr. Gibson, you registered in 1942. Is that correct?

A. That is correct.

Q. That was at the time you were required by law to register. Is that true?

A. That is true.

Q. And you filed the various documents that bear your signature among the list of exhibits, G to S-1, inclusive, did you not, with the local board?

A. Yes.

Q. Now, after you registered and after you sent your questionnaire, you filed what is known as Form 47, did you not?

A. Yes; I believe I did.

Q. After the board refused to reopen your case in May 1943, and after you wrote to the national and state director, did you receive any orders of any kind to take any further action under the selective service regulations?

A. Yes; I received an order to report for physical examination.

Q. Where was that, and when?

A. The order was from the local board at Eldorado, Arkansas, but at that time I was living in Illinois. I received my examination in Chicago on September

187 22, I believe, 1943.

Q. Did you take the physical?

A. Yes, I did.

Q. And you were accepted, were you not?

A. Yes.

Q. Did you take another physical later on?

A. Yes.

Q. You were accepted again?

A. Yes.

Q. And after you had taken the other physical and were accepted a second time, did you thereafter receive an order to report for work of national importance, which is identified as Government's Exhibit 3?

A. Yes, I did.

Q. That required you to report at the camp at Hill City, Pennington County, South Dakota, and you were ordered to report at the local board on the 21st day of August 1944, at Carlinsville, Illinois, and receive your transportation to go to the camp, did you not?

A. That is right.

Q. Tell us what you did after receiving that order?

A. I reported to the draft board at Carlinsville on the 21st day of August. I was given meal request forms and transportation to Hill City. I arrived in Hill City about noon on August 23rd. Then I called up the camp, which phone number had been sent me and about two
188 o'clock the camp truck came in. I got out to camp about 5:30 or 5:45. I went into the office of the CPS Camp No. 57, and asked to see the camp director. I was informed he was out of town, out of camp, and would probably be out for a few more days yet.

Q. Who did you talk to?

A. To the director in charge, Mr. Oscar Wiebe. I then told him I understand one entering camp is required to be given a physical examination to be found acceptable. I told him I would like to have that physical examination as soon as possible. Mr. Wiebe told me the truck did not go into Hill City where the doctor's office was. The next day, which was Friday, the doctor would not be in his office so it would be Saturday before I could get my examination. Then I was shown my bunk where I would sleep. When Saturday came around Mr. Wiebe called me in his office and told me I could not get my examination that day because the doctor was not in his office again. I told Mr. Wiebe I would like to have it as soon as possible. On Monday I was sent in to Hill City and received my examination.

Q. What date?

A. That was on August 28th. I passed my examination and Mr. Tschetter, Camp Director, came back in the same car.

Q. That is, he arrived from where?

A. From Colorado, I believe, some place.

Q. And the car picked him up at the railroad station?

189 A. That is right.

Q. And took you and Mr. Tschetter and the driver off to the camp. Is that correct?

A. That is right.

Q. What happened upon your arrival at the camp, if you recall?

A. We arrived at the camp around one o'clock. I gave Mr. Tschetter about forty-five minutes. He sat in his office and I went into his office and told him he probably knew I had arrived in camp the Wednesday before, the 23rd, but due to the fact he had not been in I hadn't had opportunity to talk to him. So I told him I had a two-page, typewritten statement of facts concerning my minister work——

Q. Now, you are talking about Defendant's Exhibit F, are you not? That is the letter you gave Mr. Tschetter?

A. That is right.

Q. What did you do with that letter?

A. I handed it to Mr. Tschetter and told him I would like for him to read it and then I would like to have a talk with him. Mr. Tschetter took the letter and began to look it over, and on the second page of the letter, he made the remark when he was reading the second page and looking it over, he says, I see you say here you can't conscientiously remain in camp. It would be a violation of your conscience and that to you, doing work in camp, is helping the war. He says, I disagree with you. I think
190 you can at least remain in camp and do this work. He says, I don't see anything about it that would violate your conscience. I explained to Mr. Tschetter I had my covenant with the Almighty God Jehovah to do His Will, and I had solemnized it by water baptism. I called his attention to what God's will was and called his attention to the scripture and this gospel was to be preached to all nations. That I was commissioned to preach good tidings, proclaim liberty——

Mr. PHILIP. That is objected to as not responsive.

The COURT. I think it is responsive, but I don't think it is material. I don't like to burden the record or take up too much time with stuff that is not material.

Mr. COVINGTON. Mr. Tschetter has testified to a conversation which lasted approximately an hour or an hour and a half. We are not going through all of the details,

but I would like to have this man, since he is charged now with wilfully leaving the camp, with unlawfully leaving, I believe his entire conversation with this man should be, at least the material parts of it, related to his state of mind, should be considered by the Court to determine whether or not this man had the necessary criminal intent that he is charged with in this indictment. I believe since the witness Tschetter has testified to the
191 matter this man should be permitted to answer the testimony of Mr. Tschetter.

The COURT. He can do that without delivering a dissertation on the tenets of the particular creed he professes.

Mr. COVINGTON. He was asked why this would violate his conscience. This is a conscientious objectors camp. It is true the conversation did actually take place. Mr. Tschetter testified to the conversation and I believe that the defendant, as a part of the defense should be permitted to give it.

The COURT. He has already told the reason he objected. The reason it bothered his conscience, his covenants with Jehovah God to do certain thing, and in the camp he could not keep his covenants, to give his state of mind. I don't want to be arbitrary but I don't want to burden the record with a lot of evidence I don't think is material at all.

Mr. COVINGTON. I don't like to take the position of arbitrarily disagreeing with the Court, but Mr. Gibson has retained me to represent him, and he has asked me to do it, and I feel if he wants to he should be permitted to give his evidence. I am not doing it for the purpose of burdening the record. I am doing it for the purpose
192 of having him come clean with all of the facts.

The COURT. He has come clean with the facts that have any bearing on the issues in this case. He has already gone over all of them. In addition to that he has testified to enough to be sufficient to convince anybody as to his state of mind and conscience in connection with the order to go out there and perform that work. I think he has gone far enough. The objection is sustained.

Mr. COVINGTON. We would respectfully except to the ruling.

The COURT. Exception allowed.

Mr. COVINGTON. I would like to make an offer of proof.

Mr. PHILIP. I think it is a mistake for me to object and let counsel make a speech.

Mr. COVINGTON. I believe he misinterprets my purpose and I cannot agree with his statement about my making speeches.

Mr. PHILIP. The record shows it.

Mr. COVINGTON. Regardless of your opinion, Mr. Philip, I say here I am not here to make speeches. I am here to get the proof in. In order to have the matter reviewed I have to offer the proof.

Mr. PHILIP. I still say I ought to keep quiet.

193 The COURT. It is his right.

Mr. COVINGTON. In connection with his further conversation with Mr. Tschetter as to the reasons why his conscience would be violated by staying at this camp we would show that the defendant told him that he had been acting as a minister of the gospel since 1940, full time, and that he felt that if he was required to stay at this camp he would be taken entirely away from the performing of his missionary and evangelistic duties which required him to devote in territory assigned to him in Illinois, which was not out there where the camp was located, more than 175 hours a month; and that since Congress had exempted ministers and since he was a minister the draft board had violated the law and that he had not violated the law, and he honestly and sincerely believed he had no duty to stay at the camp, and for that reason his conscience was not only impugned by an order to stay there but his rights were violated by the order that he stay there.

The COURT. Is that your offer?

Mr. COVINGTON. That is all of the offer on that one phase. There is some other points and questions that may come up.

194 Mr. PHILIP. I make the same objection.

The COURT. Objection sustained.

Mr. COVINGTON. We except to the ruling.

The COURT. Exception allowed.

Q. Now, what other points, Mr. Gibson, or what other questions were discussed between you and Mr. Tschetter before you left?

A. Mr. Tschetter mentioned the fact, he wondered why I was classified in 4E, and why I was not satisfied with it if I was given 4E in the first place. I explained I had never even asked for 4E at any time, and the undisputed evidence in my file showed I should be given 4D as a minister. I had obeyed every order of the draft board, even obeying their unlawful order to report to the camp at Hill City. I told him they had violated the law Congress had made by illegally requiring me to report to CPS camp in South Dakota.

Q. What other questions?

A. Mr. Tschetter seemed to give me some advice. He said no doubt I would be arrested and led into court, and sent to prison and when I got out I would be branded as a criminal. I would always be branded as an ex-convict.

Q. What did you say?

A. I said to him even if I was that would not be the first time it ever happened, that my leader, Christ Jesus himself was unlawfully arrested and unlawfully
195 tried and convicted, and those who were with Him, His apostles, were sentenced. I called his attention to Peter and John who were imprisoned and would have been released had they been willing to stop their preaching work. Acts 4:19. I told him I would follow the admonitions those faithful Christians set forth. Then he also mentioned I would be tried in Deadwood, South Dakota, and that Judge Wyman was the presiding judge there and that I would not have a chance at all. That Judge Wyman hated Jehovah Witnesses like a snake. That he would give me the limit. Which I explained I knew nothing about Judge Wyman at all. That is about the first I had ever heard of him. I explained as far as I knew he was an honest and sincere man and would be willing to render a fair decision. I said that remains to be seen but if he is not I will obey God no matter what sentence man passed upon me. I will follow the example of the three Hebrew children when ordered to bow down and worship the golden images. When they would not do it they were ordered to be thrown into a burning fiery furnace, and they said, and I say as they did, if God sees fit to deliver them He will do so, but if He doesn't see fit I will obey God, just as the three Hebrew children did.

Q. Then what?

A. That was about the conclusion of our discussion as well as I can remember. There is many things I can't remember. I asked Mr. Tschetter then, in fact I
196 told him, that I had reported to camp only to exhaust the administrative process for getting my correct classification, and that the Supreme Court ruling the Falbro and Billings cases caused me to obey the order of the draft board to report to the camp in order to exhaust every possible means to get a correct classification. I told him that was my purpose of reporting there. Then I asked that he give me a statement showing I had reported in camp on the 23rd day of August; that after completing the process of induction without agreeing to do any work in the camp, committing myself to the camp to do work there and in order to complete the process of induction I took my examination. So I asked that he give me a letter of recognition that I did this and he signed it.

Q. Do you refer to Defendant's Exhibit E? This statement signed by Mr. Tschetter, which is in evidence? That you exhausted your remedies by coming out there and taking the physical examination?

A. That is right.

Q. Anything else?

A. That was about the end of our conversation, I believe.

Q. Did you go out there for the purpose of violating the law?

A. No; I didn't go out there for that purpose at all. I knew I could not have been lawfully ordered to
197 go out there. I had been illegally ordered to go out there. The draft board was the law violators and not me. I obeyed all of the law and the law states ministers of the gospel are not obligated to go to camp and do work of national importance, and he has been granted the right under the selective service act rules and regulations to file proof showing he is a minister of the gospel and that he is exempt from military training and that he might keep on with his work of comforting those who are mourning because of wicked conditions existing on the earth.

Mr. Covington. That is all.

Cross-examination by Mr. PHILIP:

Q. As I understand it, Mr. Gibson, briefly stated, your life history began at Meridian, Mississippi, on September 14, 1922?

A. That is right.

Q. You have always lived in the United States?

A. Yes.

Q. A Citizen of the United States?

A. Yes.

Q. And you registered in 1942 with Local Board No. A, in Eldorado?

A. Yes.

Q. Your first classification was 1A?

A. Yes.

Q. Then you filed an application as a conscien-
198 tious objector?

A. I filed an application to further state my claim as a minister, not as a conscientious objector.

Q. Didn't you file a conscientious objector application?

A. I filed Form 47.

Q. And the board changed your classification from 1A to 4E. Your classification was changed by the selective service system from 1A to 4E?

A. Yes.

Q. And that gave you exemption from military duty?

A. From military duty, yes, but not from all duty.

Q. Just answer the questions and we will get along much more rapidly. And that 4E classification continued throughout, didn't it? That is still your classification?

A. Yes.

Q. Then on May 23rd an order was made by Gen. Hershey. Was that called to your attention, directing the state director of Illinois to assign you to a camp?

A. Of what year?

Q. 1944?

A. I merely received an order from the draft board.

Q. You got a draft board order to report to Civilian Public Service Camp at Hill City?

A. Yes.

Q. Pursuant to that order you went to Hill City?
199 A. Yes.

Q. And reported at that camp?

A. Yes.

Q. And stayed there long enough to get a physical examination?

A. Yes.

Q. You were told in conversation with the director that your duty was to stay in the camp?

A. That my duty was to stay in camp?

Q. Weren't you?

A. One rightfully classified 4E, it is his duty to stay there. He told me that, yes.

Q. That your duty was to stay in camp. You didn't go out there with the intention of staying in the camp, did you?

A. No; I didn't go with that intention.

Q. You went out there to report and then leave the camp, regardless of what the obligations were?

A. I had no obligations.

Q. Regardless of what the law will have to say about it or may have said about it, you did not intend to stay in that camp?

A. No; it was not my intention.

Q. The answer is "no"?

A. "No;" yes.

Q. And so you left the camp?

200 A. Yes.

Q. Who gave you any authority, written or oral, to leave the camp? What person in charge of that camp?

A. I needed no authority.

Mr. PHILIP. That is all.

Mr. COVINGTON. That is all.

Mr. COVINGTON. The defendant rests, Your Honor.

Motion for verdict of guilty

Mr. PHILIP. The government at this time moves the Court to return a verdict of guilty for the reason the evidence shows clearly that the defendant is guilty, both sides having rested.

Motion for dismissal of indictment, etc.

Mr. COVINGTON. At this time, before the Court rules upon the motion offered by the government, the defendant desires to file with the Court a motion for dismissal of the indictment and for a judgment of acquittal.

And also, Your Honor, I am keenly aware of what you ruled relative to our right to defend on the grounds stated. I have prepared certain requests for Findings of Fact and Conclusions of Law, all of which would be very material if the Court were to consider those defenses. I feel it my duty to present them to the Court.

The COURT. Certainly.

Mr. COVINGTON. I don't know whether the Court wants to rule on the motions before considering these
201 findings?

The COURT. I think we will take a few minutes recess.

(Whereupon a short recess was had and upon court again convening, the following proceedings were had:)

Recital of Court

The COURT. The requested instruction, Mr. Covington, are all denied, not because they are not, a good many of them, statements of fact, but as I view the case they are immaterial. Do you gentlemen care to argue the case?

Mr. PHILIP. I don't believe I have any opening argument to make.

Mr. COVINGTON. It was not my intention to make an argument in this case. I have stated my views as to the law and since the Court has disagreed with me I shall proceed on the ruling made at the outset of the case, and there is nothing I desire to argue. The facts are undisputed and I can't change the facts.

The COURT. As I view the case, gentlemen, there is only one thing the Court can do, and that is to find the defendant guilty as charged in the indictment. He is charged here of failure to perform a duty required of him by the board. As I view the law, the action of the board, no matter what it might have been, is not available to the defense to this particular charge. I don't think this Court has any jurisdiction to consider that defense at all, and because I view the case that way, as I say,
202 there is nothing else, there is nothing left for me to do but find the defendant guilty. Upon presentation of findings pertinent to that the same will be filed.

Mr. COVINGTON. I would ask the Court what is the intention as to the time for the imposition of sentence?

The COURT. That is entirely up to the District Attorney. Whenever he moves sentence the same will be pronounced.

Mr. COVINGTON. Since I am from out of the city I would not like to have it unduly delayed. Could we have sentence in the morning?

Mr. PHILIP. That is alright with me.

The COURT. Very well.

(At this time court was in recess until 10:00 A.M., February 14, 1945, when the following proceedings were had:)

Mr. PHILIP. Your Honor, the Court having made findings the government at this time moves that a verdict of guilty be returned by the Court.

Mr. COVINGTON. May it please Your Honor, before the Court rules on the motion for verdict finding the defendant guilty, I desire to file defendant's formal exceptions to the Findings of Fact and Conclusions of Law, which I explained to Your Honor in chambers.

The COURT. Very well.

Mr. COVINGTON. Also, yesterday upon the trial the Court overruled the motion to quash and the motion
203 for dismissal of the indictment, and I have prepared formal orders on this and desire to submit them to Your Honor for signature at this time.

The COURT. Very well. Have you prepared a verdict in this case?

Mr. PHILIP. Yes, Your Honor. The verdict of the Court having been filed herein finding the defendant guilty as charged in the indictment, I now move that sentence be pronounced upon the defendant.

The COURT. By Indictment No. 1811, which was returned and filed and made a record of this court on the 6th day of December, 1944, you, Taze Hamrick Gibson, are charged with a violation of that particular federal statute commonly known as the Selective Service and Training Act, in that it is alleged in the indictment that you failed and refused to perform a certain duty required of you by the Selective Service and Training Act pursuant to the provisions of that legislation.

When arraigned upon this charge in open court you entered an oral plea of not guilty to the charge set forth

in the indictment. Thereupon the District Attorney moved the case for trial and you filed in the court a written waiver of trial by jury and consented to be tried by the Court. The District Attorney also, in behalf of the
204 government, filed a consent that the case might be tried without a jury and to the Court. Thereafter the Court heard the opening statements of counsel and considered the evidence, the greater part of which was by stipulation of facts, and after hearing the evidence and arguments of counsel and being fully advised in the premises, the Court made findings and returned a verdict of guilty as charged in the indictment.

The District Attorney has moved the case for judgment and now, before pronouncing sentence it is incumbent upon the Court to ask you if you have any legal grounds or cause to show why the judgment of the Court should not be pronounced at this time?

The DEFENDANT. I feel that I have not received a fair trial in this case because the Court contends that my reasons for leaving the camp in Hill City, South Dakota, have no bearing upon the case, but I know they do have bearing on the case because I was not obligated to stay in the camp any more than a ten year old child or an eighty year old man was obligated to stay there, because a minister of the gospel has no duty to stay in a camp like that. I might also add that I believe that my rights have been denied under the Constitution of the United States; also my God given rights to continue to preach the gospel. I am still permitted to witness before Christ Jesus and the law as Christ Jesus states in Mat-
205 thew 24, Luke 13, Mark 21, that all Christians would have opportunity to do. It might be called to the Court's attention to that even though I am being sentenced, that the fight is not once against me but against Almighty God. We are told in Matthew 25, that when anything is done to one of God's little ones it is done to Him.

The COURT. So far as any responsibility that I assume in this matter, you don't need to discuss that at all. I am aware of my responsibilities. So far as my responsibility to God is concerned that is between me and God. That is no reason why you should not be sentenced.

The DEFENDANT. My point I desire to bring out, I feel I have been unjustly tried.

The COURT. You have already stated that. That is a very common feeling among men who have been convicted of violating the law of the land. A great many of them feel they have been unjustly treated.

Mr. COVINGTON. If he is through and you are finished I would like to say a word, Your Honor.

The COURT. Very well.

Mr. COVINGTON. I feel, as I stated to Your Honor, at the outset, that this case here presents an angle under the Act and the regulations which are really not disposed of by previous decisions. I am well aware of the fact
206 Your Honor has ruled against me on that contention, but inasmuch as it involved the element of this defendant's conscience and his belief that he was exempt, and since, too, the draft board and appeals board arbitrarily and capriciously classified him, as shown by the files, although the Court is of the opinion it could not judicially review the classification in defense to the indictment because of decisions by the Courts, I feel Your Honor should take action similar to that taken by Judge Campbell, United States District Judge in Chicago, which I tried there last October, and which, incidentally, was tried before the Court without a jury, and the facts were identical with the facts in the case. Judge Campbell suspended the imposition of sentence and placed the man on probation on the condition that he continue in the performance of his full time minister work, although the facts were identical with this presented in this case. I don't urge that as any stere decisis or rule upon this Court's exercise of discretion, but I mention that case to the Court for what it may be worth. I am not standing here begging for mercy for this defendant, but at the same time it must be recognized that this type of case is essentially different from a case where a man has violated the statutes of the United States prohibiting the doing of some wrong like the commission of murder or theft. Administrative agencies have been set up here and
207 there exists a bona fide conflict between this defendant and the administrative agency, and inasmuch as I feel that the board did not properly proceed, accord-

ing to law, that Your Honor should consider that in arriving at the sentence to be imposed in this case. I have nothing further to say before sentence is pronounced.

The COURT. I am willing to state that I don't doubt the sincerity of this defendant in the position that he takes. The case is different from one or two cases of the kind that have come before me in that regard. I could not say that about all of the defendants that have appeared in cases of this kind, but I do say it unreservedly as to this defendant. If there is any merit in the contention which he makes as to the fact that he was arbitrarily classified, that, as I understand the law, could not be urged as a defense in the trial of this case. The facts are undisputed that he violated an order of the Selective Service board; the facts are undisputed that he went to the camp with the deliberate intention to violate that order. He can't urge that he didn't do it willingly, or intentionally, or knowingly. He went there knowing what his duty under that order was and went there for the sole and express purpose of deliberately violating it for the purpose of testing the correctness of his contention as to what his rights under the law really were. If he had desired to avail himself of the contention he had
208 opportunity to do it. He has not been denied the right to present the defense in support of his constitutional rights. I am not prepared to say what the result would have been had he proceeded as the law contemplates that he should proceed. If he had stayed at that camp and got a writ of habeas corpus, and if the facts are as he contends they are, and which I have no right or reason to doubt at this stage of the proceedings, if those were the facts I have no doubt but what a court would have taken them into consideration and his constitutional rights would have been considered in that proposition. But under the law as expressed by the highest courts in the land, there isn't any room for the contention that this Court has a right to consider the action of that board as a defense to the violation of this regulation. There can be no question as to that.

Having given the matter due consideration, viewed from every angle, I see no reason why I should make any exception as to this defendant in the penalty pronounced.

He deliberately refused to comply with the order of the board for the purpose of testing the question out. He was willing to abide by the orders of the Court in order that that question might be decided. I see no reason why he should be placed in any different category than the man who merely violates because he does not think they have any right to make him go to camp. He occupies the same position.

209 It is the judgment of the Court, that you, Taze Hamrick Gibson, be committed to the custody of the Attorney General of the United States for imprisonment for and during the full term and period of five years, and that pending the execution of the judgment you be committed to the custody of the United States Marshal.

Mr. COVINGTON. Now, may it please the Court, at this time I file with the clerk the defendant's notice and grounds for appeal, together with the required number of copies, and I also move the Court at this time to admit this defendant to bail pending the disposition of this appeal which we are taking in good faith, and which is not taken for the purpose of delay.

(Here followed argument of counsel in support of the above motion.)

The COURT. The question that controls the Court on the matter of appeal is not the question of whether the Court is satisfied it will be affirmed or not. The question that the Court is governed by is whether or not, in the opinion of the Court, there is a substantial question. That is the only question. This Court will not grant any bail. I won't do it because I don't think I have any right to grant it.

Mr. COVINGTON. I take exception to Your Honor's ruling.

The COURT. Exception allowed.

210 Mr. COVINGTON. At this time I would like to get an order from the Court to the Clerk directing that photostatic copies be sent up in their original form.

The COURT. Is there anything in the rules against that?

The CLERK. That will leave our original file without those exhibits.

Mr. COVINGTON. They will be returned upon the disposition of the appeal.

I would like also to have this understanding with the Court: That the stenographer present the bill of exceptions in my behalf to Your Honor, when they are drawn up, for approval by Your Honor, and when they are presented, if they meet the situation, that you and the District Attorney sign them and order them filed with the Clerk in my absence.

The COURT. In view of the fact, gentlemen, that the procedure, as you indicate you desire to be had, is not in strict accordance with the rules on appeal, wouldn't it be well for you two gentlemen to enter into a stipulation, waiving the necessary notice and one thing and another, and providing just how the record should be settled. I suggested that because it is highly important if you get into the Court of Appeals, they will consider every question, and it is well to have no question come up as to any irregularity in the settlement of the record
211 which might preclude the disposition of the case in the appellate court.

Mr. PHILIP. It strikes me that in settling the bill of exceptions that he should follow the procedure laid down by the rules and be called in by the Court to settle them.

Mr. COVINGTON. That is necessary when counsel cannot agree on the matter. Here we have a federal court stenographer who is going to prepare the record as quickly as possible. I am willing to waive notice. I am not going to insist on the five day notice and all that sort of thing required by the rules, and if counsel agrees to waive them I am willing to waive them. What is the use of delaying the matter?

The COURT. I don't see any necessity for that?

Mr. COVINGTON. At this time the defendant comes into Court and hereby waives any of the rights and requirements relative to the issuance of notice and the having of a hearing before the United States District Judge relative to the settlement, and agrees if, as and when the court stenographer prepares the transcript of the testimony and proceedings in this case, that they shall be presented to the United States District Judge and the United States Attorney for their approval, and when so approved by the Judge and the District Attorney, that they shall be

signed by the Judge and filed with the papers in the
212 proceedings, without complying with the formalities required by the rules of the Supreme Court of the United States in the issuance of notice and having a hearing for the setttlement of the bill of exceptions.

The COURT. I don't think there is anything wrong about your having all of the record before the Court of Appeals.

Mr. COVINGTON. The reason I make it at this time is on account of the fact I am non-resident counsel. As long as he is in jail and I want to get him out on bond as quickly as possible, I think it is incumbent upon me to get an appeal through in this case with despatch.

The COURT. It is absolutely alright. I think you are right in the position you take.

Mr. PHILIP. It is alright with me.

Mr. COVINGTON. I am entirely satisfied and I know it will be agreeable to the Circuit Court of Appeals under the circumstances. All I want is the complete record up there.

Reporter's certificate

213 I hereby certify that the within and foregoing transcript of trial proceedings is a full, true and correct transcript of my shorthand notes taken at the time of the trial of said cause and by me personally transcribed.

BEAT. O. COLKINS, *Reporter.*

214 In the District Court of the United States
for the District of South Dakota.

[Title omitted.]

Order settling bill of exceptions

I, the undersigned United States District Judge, who presided at the trial of the above entitled cause, do hereby certify that the foregoing bill of exceptions contains all of the material facts, matters, things, proceedings, objections, rulings and exceptions thereto, occuring upon the trial of said cause and not heretofore a part of the record herein,

including all evidence adduced at the trial; and I further certify that the exhibits set forth or referred to, or both, in the foregoing bill of exceptions, constitute all of the exhibits offered in evidence at the said trial, and I hereby make all of said exhibits a part of the foregoing bill of exceptions; and I hereby settle and allow the foregoing bill of exceptions as a full, true and correct bill of exceptions in this cause and order the same filed as part of the record herein, and further order the clerk of this court to forward with the bill of exceptions, all of the said exhibits not set forth therein; and to transmit said entire bill of exceptions including all exhibits whatsoever, to the Circuit Court of Appeals for the Eighth Circuit.

215 I further certify that the foregoing bill of exceptions is presented, settled and allowed within the time prescribed for that purpose.

Dated this 23rd day of February 1945.

By the Court:

A. LEE WYMAN, *Judge.*

Service admitted Feby. 26, 1945.

GEORGE PHILIP; *U. S. Attorney.*

Filed February 23, 1945.

ROY B. MARKER, *Clerk.*

247 In United States District Court

Docket 3049

THE UNITED STATES

vs.

TAZE HAMRICK GIBSON

Docket entries

Dec. 6, 1944 Presentment entd. and Indictment filed 12-6-44

Dec. 6, 1944 Application filed 12-6-44

Dec. 6, 1944 Order transferring case filed 12-6-44

Dec. 5, 1944 Ent. Order fixing bail in sum of $5000.00

Dec. 6, 1944 Filing Praec. for Warrant, etc.
Dec. 6, 1944 Ent. Order for Warrant to issue
Dec. 6, 1944 Issuing Warrant Fur. copy of Warrant
Dec. 6, 1944 Warrant retd., filed, end. by Mar. with non est return
Dec. 6, 1944 Filing Praec. for C. copy of Ind. and Warrant Fur. same
Dec. 7, 1944 Filing Bail Bond Ent. Approval of same
Jan. 26, 1945 Filing Motion for Sub. for witnesses for Dfdt. at cost of U. S.
Jan. 26, 1945 Filing Order denying above Motion, Ent. same Attesting
Jan. 30, 1945 Filing Praec. for Sub. for John J. McKenna Issuing Sub. C. copy for service
Jan. 30, 1945 Filing Praec. for Sub. for Atlee Beechy—duces tecum Issuing Sub. C. copy for service
Feb. 1, 1945 Filing Affidavit of Taze Hamrick Gibson
Feb. 1, 1945 Filing Motion to Quash Indictment
Feb. 3, 1945 Sub. for Atlee Beechy retd., filed, end. by Mar. as executed
Feb. 5, 1945 Sub. for John J. McKenna retd., filed, end. by Mar. as executed
Feb. 5, 1945 Filing Praec. for Sub. for Paul G. Tschetter Issuing Sub. C. copy
Feb. 10, 1945 Sub. for Paul G. Tschetter retd., filed, end. by Mar. as executed
248 Feb. 13, 1945 Filing Application
Feb. 13, 1945 Filing Order for change of place of trial Ent. same Attesting
Feb. 13, 1945 Filing Waiver of Jury Trial
Feb. 13, 1945 Filing Consent of Plff. to filing of Waiver of Jury Trial
Feb. 13, 1945 Filing Stipulation for trial at Sioux Falls on Feb. 13-45
Feb. 13, 1945 Ent. hearing on Motion to Quash
Feb. 13, 1945 Ent. Arr. & Plea—Not Guilty
Feb. 13, 1945 Filing Plff's Ex. 1 being Questionnaire
Feb. 13, 1945 Filing Plff's Ex. 2 being Assignment to work

Feb. 13, 1945 Ent. Plff's Ex. 3 being Order to Report for work

Feb. 13, 1945 Filing Dfdt's Ex. A being copy of letter dated 8-18-44 attached to letter of Paul G. Tschetter to J. N. Weaver, Natl. Service Board, Washington

Feb. 13, 1945 Filing Dfdt's. Ex. B being Letter dated 12-5-44 Walfred Lindstrom to Atlee Beechy, copy of Report of Physical Examination and Induction of Taze Gibson

Feb. 13, 1945 Filing Dfdt's Ex. C being Personal Record of Taze Hamrick Gibson dated 8-24-44

Feb. 13, 1945 Filing Dfdt's Ex. D being Individual Record of Campee

Feb. 13, 1945 Filing Dfdt's Ex. E being Statement made by Paul G. Tschetter dated 8-28-44

Feb. 13, 1945 Filing Dfdt's Ex. F being Letter dated 8-18-44 Taze Hamrick Gibson to Paul G. Tschetter

Feb. 13, 1945 Ent. Order that Dfdt's Exs. A to F may be withdrawn upon substitution of photostatic copies

Feb. 13, 1945 Swearing witnesses Atlee Beechy, Paul G. Tschetter John J. McKenna on behalf of Plff.

Feb. 13, 1945 Swearing witnesses Alice Simpson, Taze Hamrick Gibson on behalf of Dfdt.

Feb. 13, 1945 Ent. Trial Proceedings

Feb. 13, 1945 Filing Motion for Dismissal and for Judgment of Acquittal

249 Feb. 13, 1945 Filing Request for Findings and Conclusions No. 1

Feb. 13, 1945 Filing Request for Findings and Conclusions No. 2

Feb. 13, 1945 Filing Request for Findings and Conclusions No. 3

Feb. 13, 1945 Filing Request for Findings and Conclusions No. 4

Feb. 13, 1945 Filing Request for Findings and Conclusions No. 5

Feb. 13, 1945 Filing Request for Findings and Conclusions No. 6
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 7
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 8
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 9
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 10
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 11
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 12
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 13
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 14
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 15
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 16
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 17
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 18
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 19
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 20
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 21
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 22
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 23
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 24
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 25
Feb. 13, 1945 Filing Request for Findings and Conclusions No. 26

Feb. 13, 1945 Filing Request for Findings and Conclusions No. 27

Feb. 14, 1945 Filing Findings of Fact. Ent. same Attesting

Feb. 14, 1945 Filing Exception to Findings of Fact

Feb. 14, 1945 Filing Order overruling Motion to Quash Indictment Ent. same Attesting

250 Feb. 14, 1945 Filing Order overruling Motion to Dismiss Indictment and for Judgment of Acquittal Ent. same Attesting

Feb. 14, 1945 Filing Verdict. Ent. same

Feb. 14, 1945 Ent. Trial Proceedings

Feb. 14, 1945 Filing Sentence (5 yrs. custody Atty. Gen.) Ent. same. Attesting

Feb. 14, 1945 Fur. 2 C. copies of Sentence for service

Feb. 14, 1945 Filing Notice of Appeal in Duplicate with Admission of Service endorsed thereon

Feb. 14, 1945 Mailing Duplicate Notice of Appeals and List of Docket Entries to U. S. Circuit Court of Appeals

Feb. 14, 1945 Filing Order that Exs. 1 to 3 and A to S-1 be forwarded to Clerk of Circuit Court of Appeals Ent. same. Attesting

Feb. 14, 1945 Filing Designation of Record on Appeal

Feb. 16, 1945 Filing Photostatic copies of Dfdt's Ex. A, B, C, D, E, and F

Feb. 21, 1945 Filing Receipt for Exs. A, B, C, D, E, and F

Feb. 23, 1945 Filing C. copy of Order of Circuit Court of Appeals denying Motion for Bail pending Appeal. Ent. same

Feb. 23, 1945 Filing Bill of Exceptions. Ent. fact of same being settled and allowed

Feb. 24, 1945 Filing Assignment of Errors

251 In United States District Court

[Title omitted.]

Designation of the record on appeal

Filed Feb. 14, 1945

To Mr. Roy D. Marker, *Clerk,*
United States District Court,
Sioux Falls, South Dakota.

The above named defendant has duly appealed to the United States Circuit Court of Appeals for the Eighth Circuit. You shall prepare a transcript of the record according to law containing the following documents, to wit,

1. The indictment.
2. The motion to quash the indictment, affidavit of Gibson.
3. The order denying motion to quash.
4. The motion for subpoenas.
5. The order denying motion for subpoenas.
6. The motion for a dismissal of the indictment and for a judgment of acquittal.
7. The order denying motion for a dismissal of the indictment and for a judgment of acquittal.
8. The defendant's requests for findings of fact and conclusions of law numbers 1 to 27 inclusive.
9. The findings of fact and conclusions of law adopted by the court.

252 10. Defendant's exceptions to the findings of fact and conclusions of law & verdict of the court.

11. The judgment and sentence of the court upon such findings and conclusions.
12. The notice of and grounds for appeal.
13. The assignments of error.
14. The clerk's docket entries.
15. The bill of exceptions as prepared by the official court stenographer and settled by the judge.
16. The exhibits referred to in the bill of exceptions shall not be copied but the photostatic copies received in evidence shall be sent up to the Circuit Court of Appeals

in the form they were offered in evidence and marked by the stenographer.

17. The Clerk's certificate.

The above and foregoing constitute the entire record made in your court in this case and when the transcript is prepared in accordance with this designation you shall promptly forward it to the Clerk of the United States Circuit Court of Appeals. You are informed that a copy of this designation has been delivered to the United States Attorney.

Dated February 14, 1945.

Hayden C. Covington,
HAYDEN C. COVINGTON,
Attorney of Record for Defendant-Appellant,
117 Adams Street, Brooklyn, New York.

253 Service Admitted Feby. 14, 1945.

GEORGE PHILIP,
United States Attorney.

254 [Clerk's certificate to foregoing transcript omitted in printing.]

255 In United States Circuit Court of Appeals,
Eighth Circuit

No. 13049

TAZE HAMRICK GIBSON, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of South Dakota

Mr. Hayden C. Covington for Appellant.

Mr. Irving S. Shapiro, Attorney, Department of Justice (Mr. George Philip, United States Attorney, Mr. Nathan T. Elliff, Special Assistant to the Attorney General, and Mr. Robert S. Erdahl, Attorney, Department of Justice, were with him on the brief) for Appellee.

Before SANBORN, WOODROUGH, and THOMAS, Circuit Judges.

Opinion

June 15, 1945.

SANBORN, Circuit Judge, delivered the opinion of the Court.

The appellant, a registrant under the Selective Training and Service Act of 1940 (54 Stat. 885; 50 U.S.C.A. Appendix, §§ 301–318) was indicted for violating Section 11 of the Act[1] by deserting from the Civilian Public Service Camp at Hill City, South Dakota, to which he, as a conscientious objector, had been assigned by his local board to perform work of national importance. He entered a plea of not guilty, waived a jury, and, after a trial by the court, was found guilty and sentenced. He has appealed. His main contention is that the District Court erred in ruling that the propriety of his classification as a conscientious objector was not an issue in the case. His proffered defense was that he was in fact exempt from service, being a "regular or duly ordained" minister of religion [§ 5(d) of the Act (50 U. S. C. A. Appendix, § 305(d))]; that he should have been so classified; that the order assigning him to the camp was therefore invalid; and that he had failed to perform no duty which he was legally required to perform.

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The only difference between this case and the case of Falbo v. United States, 320 U. S. 549, (relied upon by the government) is that Falbo failed to obey an order to report for assignment to work of national importance (p. 550 of 321 U. S.), while the appellant here obeyed the order to report, so as to complete the administrative process incident to induction. After being examined by the camp doctor and being found to be physically fit to perform work at the camp, the appellant advised the camp director that he (appellant) was a minister of religion, that he had been improperly classified as a conscientious objector, and that he would therefore refuse to work. He then left the camp, without authority. In the Falbo case, the Supreme Court rejected the contention that the alleged misclassification of Falbo by the local board was an issue. The Supreme Court pointed out that

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[1] Section 11 (50 U.S.C.A. Appendix, §311) imposes penalties for wilful failure or neglect to perform a duty required by the Act or by rules or regulations made pursuant to the Act.

the order to report for work of national importance is not the equivalent of acceptance for service, that the conscientious objector may be rejected at the civilian public service camp, and that the order "is no more than a necessary intermediate step in a united and continuous process designed to raise an army speedily and efficiently." (P. 553 of 320 U. S.) The court then said (p. 554 of 320 U. S.):

"* * * Even if there were, as the petitioner argues, a constitutional requirement that judicial review must be available to test the validity of the decision of the local board, it is certain that Congress was not required to provide for judicial intervention before final acceptance of an individual for national service. The narrow question therefore presented by this case is whether Congress has authorized judicial review of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report for the last step in the selective process.

"We think it has not. The Act nowhere explicitly provides for such review and we have found nothing in its legislative history which indicates an intention to afford it. The circumstances under which the Act was adopted lend no support to a view which would allow litigious interruption of the process of selection which Congress created. * * * Surely if Congress had intended to authorize interference with that process [of selection] by intermediate challenges of orders to report, it would have said so."

The appellant infers from this language that if Falbo, instead of refusing to obey the intermediate order to report to the Civilian Public Service Camp for induction, had obeyed that order, and, after being accepted at the camp, had deserted and had then been indicted for failure to perform a duty required by the Act, he, having
258. completed the selective process, would have been entitled to assert as a defense that he was a minister and had been erroneously classified. The appellant cites Billings v. Truesdell, 321 U. S. 542, in support of this theory. The question in the Billings case was whether Billings, who had filed a petition for habeas corpus alleging that he was not a member of the armed forces of the

United States, had been actually inducted into the army and was therefore subject to military jurisdiction. That case draws the distinction between "acceptance" for military service and "induction" into such service, but has little, if any, relevancy to the appellant's situation.

The government argues that, being subject to the Selective Training and Service Act, the appellant could not test the validity of his classification by deserting from the camp to which he had been assigned, and that his remedy was to submit to detention and then to apply for a writ of habeas corpus. The District Court was right in accepting that as the law. One who is subject to the Act may not defy it. If he contends that he was erroneously classified, he may, after induction, obtain through habeas corpus a hearing upon the legality of his classification. Hirabayashi v. United States, 320 U. S. 81, 108, and cases cited; Bronemann v. United States, 8 Cir., 138 F. 2d 333, 337; Giese v. United States (App. D.C.) 143 F. 2d 633, 634–635, affirmed — U. S. —, 65 S. Ct. 437; Biron v. Collins, 5 Cir., 145 F. 2d 758; United States v. Flakowicz, 2 Cir., 146 F. 2d 874, certiorari denied, — U. S. —, 65 S. Ct. 1086; United States v. Rinko, 7 Cir., 147 F. 2d 1, certiorari denied, — U. S. —, 65 S. Ct. 1086; Smith v. United States, 4 Cir., 148 F. 2d 288, 291, certiorari granted, — U. S. —.

The contention that the Act is unconstitutional if construed so as to require the appellant to submit to detention and then to apply for a writ of habeas corpus
259 as a condition precedent to a judicial review of the action of the local board, we think merits no discussion in view of the cases cited.

The judgment appealed from is affirmed.

260 In United States Circuit Court of Appeals,
Eighth Circuit

No. 13049. May Term, 1945

TAZE HAMRICK GIBSON, APPELLANT

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the District of South Dakota

Judgment

June 15, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of South Dakota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment and sentence of the said District Court, in this cause, be, and the same is hereby, affirmed without costs to either party in this Court.

And it is further ordered by this Court that the defendant in the said District Court do surrender himself to the custody of the United States Marshal for the District of South Dakota, if not now in custody, in execution of the judgment and sentence imposed upon him, within thirty days from and after the date of the filing of the mandate of this Court in the said District.

261 In United States Circuit Court of Appeals,
Eighth Circuit

[Title omitted.]

Docket entries

Feb. 16, 1945—Docketed on Duplicate Notice of Appeal.
Feb. 16, 1945—Duplicate Notice of Appeal.
Feb. 16, 1945—Statement of Docket Entries.

Feb. 16, 1945—Notice of and Petition for Bail pending appeal or for order advancing cause for submission.

Feb. 19, 1945—Order: Application Appellant for bail pending appeal denied and alternative application for advancement of hearing of appeal granted and case to be set at May Term, 1945, etc.

Feb. 20, 1945—Issue Certified copy order of Feb. 19, 1945, to Clerk of District Court.

Mar. 2, 1945—Appearance Appellee.

Mar. 5, 1945—Transcript of record filed.

Mar. 12, 1945—Motion for leave to proceed further in forma pauperis, and Notice.

Mar. 12, 1945—Affidavit of Appellant in forma pauperis.

Mar. 20, 1945—Order: Appellant granted leave to present case on typewritten record and briefs, etc.

Mar. 22, 1945—Transfer to Docket for May Term, 1945.

Mar. 23, 1945—Appearance Appellant.

Apr. 10, 1945—Brief Appellant (type).

Apr. 10, 1945—Appendix for Brief Appellant (type).

Apr. 9, 1945—Motion appellant for leave to file extended brief.

Apr. 10, 1945—Order: Leave granted appellant to file brief containing 102 pages, on motion.

Apr. 30, 1945—Brief of United States.

May 15, 1945—Appearance Appellee.

May 15, 1945—Enter order argued and submitted to Judges Sanborn, Woodrough and Thomas.

June 15, 1945—Opinion, Judge Sanborn.

June 15, 1945—Two copies opinion sent to counsel.

June 15, 1945—Judgment: Judgment and sentence affirmed without costs to either party in this Court.

July 6, 1945—Praecipe for transcript for Supreme Court, U. S.

July 10, 1945—Order: Clerk directed to transmit transcript of record and exhibits to Supreme Court, U. S., etc.

262 In United States Circuit Court of Appeals,
Eighth Circuit

[Title omitted.]

Praecipe for transcript of record upon petition for writ of certiorari

Filed July 6, 1945

To The Honorable [illegible] Clerk of Said Court:

Now comes Taze Hamrick Gibson and shows that he proposes to file a petition for writ of certiorari with the Clerk of the Supreme Court of the United States, together with a Motion for Leave to Proceed in Forma Pauperis, and hereby requests the Clerk to prepare immediately and forward to the Clerk of the Supreme Court of the United States the original transcript of the record filed in the office of the Clerk of the United States Circuit Court of Appeals by the Clerk of the United States District Court for the District of South Dakota, together with a copy of all other proceedings had in the United States Circuit Court of Appeals, all of which is recapitulated as follows, to wit:

(1) Original transcript of record filed in this cause

(2) Judgment and order of affirmance entered in this court on June 15, 1945

(3) Copy of opinion of the court dated June 15, 1945

(4) Copy of docket entries of this court showing the dates of filing of all papers and proceedings had in this cause

(5) Copy of this praecipe for transcript of record upon petition for writ of certiorari

(6) Certificate of Clerk of the United States Circuit Court of Appeals

262 WHEREFORE the Clerk is requested to immediately prepare the transcript of the record as above designated and forward same to the Clerk of the Supreme Court of the United States.

HAYDEN C. COVINGTON,
Attorney for Taze Hamrick Gibson.

CERTIFICATE

STATE OF NEW YORK, *County of Kings, ss:*

This is to certify that the undersigned attorney of record for Taze Hamrick Gibson has this day caused a copy of the above praecipe for transcript of the record upon petition for writ of certiorari to be served upon the attorney of record for the United States of America by mailing said copy to Mr. George Philip, United States Attorney, Rapid City, South Dakota, in the manner required by law.

Hayden C. Covington.
HAYDEN C. COVINGTON.

Subscribed and sworn to before me this 3rd. day of July 1945:

William K. Jackson,
WILLIAM K. JACKSON,
Notary Public Kings County
Kings Co. Clk's No. 97, Reg. No. 62–37.
Commission Expires March 30, 1947.

263 In United States Circuit Court of Appeals,
Eighth Circuit

[Title omitted.]

Order directing Clerk to transmit transcript of record and exhibits to Supreme Court, U. S., etc.

July 10, 1945

Judgment and sentence of the District Court in this case was affirmed by this Court and counsel for appellant has now filed a praecipe for transcript of record for filing in the Supreme Court of the United States with a petition for writ of certiorari wherein, among other things, he requests that the Clerk forward to the Supreme Court of the United States the original transcript of the record from the District Court as filed on the appeal in this Court. Appellant was granted leave by this Court to present his appeal on the typewritten transcript of the

record from the District Court and therefore the record was not printed.

The Clerk of this Court is by the Court hereby ordered to transmit to the Clerk of the Supreme Court of the United States said typewritten transcript of the record with requested parts of the proceedings in this Court and also the original exhibits which were received from the Clerk of the District Court with the transcript of the record. The Clerk is also directed to request that the transcript of the record and original exhibits be returned to this Court when they have answered their purpose in the Supreme Court.

Issuance of the mandate of this Court which is now due is by the Court hereby stayed for a period of twenty days from and after this date, and if within said period there is filed in the Supreme Court of the United States a petition for writ of certiorari and accompanying record and brief in support and a certificate from the Clerk of the Supreme Court of the United States is received by the Clerk of this Court within said period the issuance of mandate will then be withheld until final disposition of the case in the Supreme Court.

264 [Clerk's certificate to foregoing transcript omitted in printing.]

265 Supreme Court of the United States

Order granting motion for leave to proceed *in forma pauperis*

October 22, 1945

On consideration of the motion for leave to proceed herein in forma pauperis.

It is ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice JACKSON took no part in the consideration or decision of this motion.

266 Supreme Court of the United States

Order allowing certiorari

Filed October 22, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

[Endorsement on cover:] In forma pauperis. Enter Hayden C. Covington. File No. 49924. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 221. Taze Hamrick Gibson, Petitioner *vs.* The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed July 13, 1945. Term No. 221 O.T 1945.

U. S. Government Printing Office 1945—674310